

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE; CHAMPION
BREWING CO., LLC; ESCAFÉ; MAS TAPAS;
MAYA RESTAURANT; QUALITY PIE;
RAPTURE RESTAURANT AND NIGHT
CLUB; ALAKAZAM TOYS AND GIFTS;
ALIGHT FUND LLC; ANGELO JEWELRY;
HAYS + EWING DESIGN STUDIO, PC;
WOLF ACKERMAN DESIGN, LLC;
WILLIAMS PENTAGRAM CORPORATION;
BELMONT-CARLTON NEIGHBORHOOD
ASSOCIATION; LITTLE HIGH
NEIGHBORHOOD ASSOCIATION; and
WOOLEN MILLS NEIGHBORHOOD
ASSOCIATION,

Plaintiffs,

v.

PENNSYLVANIA LIGHT FOOT MILITIA;
NEW YORK LIGHT FOOT MILITIA;
VIRGINIA MINUTEMEN MILITIA;
AMERICAN FREEDOM KEEPERS, LLC;
AMERICAN WARRIOR REVOLUTION;
REDNECK REVOLT; SOCIALIST RIFLE
ASSOCIATION; TRADITIONALIST
WORKER PARTY; VANGUARD
AMERICA; LEAGUE OF THE SOUTH, INC.;
NATIONAL SOCIALIST MOVEMENT;
JASON KESSLER; ELLIOTT KLINE;
CHRISTIAN YINGLING; GEORGE
CURBELO; FRANCIS MARION; ACE
BAKER; MATTHEW HEIMBACH;
CESAR HESS; SPENCER BORUM;
MICHAEL TUBBS; and JEFF SCHOEP,

Defendants.

Case No. _____

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

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I. INTRODUCTION

1. The establishment of private armies is inconsistent with a well-ordered society and enjoys no claim to protection under the law. Indeed, Virginia law has long recognized the threat to civil order and public safety posed by organized groups prepared to use force outside the careful strictures of the Commonwealth's supervision. In language that dates back to the Virginia Declaration of Rights of 1776, Article I, Section 13 of the Virginia Constitution provides that "in all cases the military should be under strict subordination to, and governed by, the civil power." A section of the Virginia Code is dedicated to prohibiting "unlawful paramilitary activity," as specified therein. *See* Va. Code Ann. § 18.2-433.2. And another state statute forbids falsely assuming the functions of any peace officer or law-enforcement officer. *See id.* § 18.2-174.

2. As the United States Supreme Court has long recognized, "Military organization and military drill . . . are subjects especially under the control of the government of every country. They cannot be claimed as a right independent of law." *Presser v. Illinois*, 116 U.S. 252, 267 (1886). And for good reason: "[T]he proliferation of private military organizations threatens to result in lawlessness and destructive chaos." *Vietnamese Fishermen's Ass'n v. Knights of the Ku Klux Klan*, 543 F. Supp. 198, 216 (S.D. Tex. 1982).

3. These dangers were vividly demonstrated at the "Unite the Right" rally at Emancipation Park in Charlottesville, Virginia, on August 12, 2017. Touted as an opportunity to protest the removal of a controversial Confederate statue, the event quickly escalated well beyond such constitutionally protected expression. Instead, private military forces transformed an idyllic college town into a virtual combat zone.

4. Several white-nationalist organizations came to Charlottesville to fight. Applying techniques developed well in advance, affiliated bands of alt-right warriors used clubs, flagpoles, and shields to batter their ideological opponents. Sporting matching uniforms and weaponry—and with command structures to coordinate their actions—they functioned as paramilitary units. These paramilitary organizations and their leaders (the Alt-Right Defendants) wielded their weapons on August 12 not “as individuals” exercising their Second Amendment rights to self-defense, but “as members of a fighting force.” *District of Columbia v. Heller*, 554 U.S. 570, 593 (2008). Just as they had anticipated and indeed desired, these groups encountered significant resistance from counter-protestors within the so-called Antifa and other movements, many of whom fought back with comparable intensity, though without the hallmarks of private armies that characterized the Alt-Right Defendants’ contributions to the day’s violence.

5. Other Defendants—self-professed private militia groups and their commanders—purported to function as peacekeepers. These vigilante militia members (Militia Defendants) carried assault rifles as they patrolled the sidewalks in combat boots, military-grade body armor, and, in most cases, camouflage uniforms. They were equipped to inflict massive harm upon a moment’s notice from their commanders. Whatever their stated intentions, these groups terrified local residents and caused attendees to mistake them for authorized military personnel. In reality, they answered to no governmental authority, and their activity draws no support from the Second Amendment, which protects an individual right to self-defense and extols the virtues of a “well regulated Militia,” while creating no right to form unregulated private armies or private peacekeeping forces. *Heller*, 554 U.S. at 614; *Presser*, 116 U.S. at 267.

6. Defendants’ unlawful paramilitary activity shows no signs of abating. The Commonwealth of Virginia and the City of Charlottesville have taken on talismanic significance

in the white-nationalist community. It was in Charlottesville that an online clique of ethno-statists became a movement with real destructive force—that they began “stepping off the internet in a big way.”¹ Charlottesville has been besieged repeatedly by these groups, and key organizers and leaders of the Unite the Right rally have pledged to return to Charlottesville as often as possible. They made good on their promise just five days ago, reappearing at Emancipation Park in a torchlit procession designed to intimidate local residents. A co-organizer of Unite the Right closed out the incident by leading his followers in chanting, “We will be back!”²

7. As demonstrated at the Unite the Right rally, several alt-right groups have become increasingly militarized and appear to regard collective armament as an indispensable means of showcasing their physical influence. The prevalence of such paramilitary units at the promised future rallies will, in turn, continue to attract private militia groups that regard the alt-right movement’s destructive capabilities as justification for undertaking unauthorized peacekeeping missions.

8. This suit does not seek to restrict the individual Second Amendment right to arm oneself for self-defense. Nor would it imperil Defendants’ First Amendment rights to peaceably assemble and express their political views, however abhorrent they might be to others. Instead, it aims to restore the longstanding public-private equilibrium disrupted by Defendants’ unlawful paramilitary conduct. In Charlottesville today, as through centuries of American tradition, the government alone retains a monopoly on the organized use of force. “No independent military

¹ *Charlottesville: Race and Terror – VICE News Tonight (HBO)*, YOUTUBE, Aug. 14, 2017, <https://www.youtube.com/watch?v=P54sP0Nlugg> (7:57 mark) (quoting *Daily Stormer* author Robert “Azzmador” Ray).

² Richard Spencer, *Back in Charlottesville*, PERISCOPE, Oct. 7, 2017, <https://www.pscp.tv/RichardBSpencer/1yoKMpodMMexQ?t=27> (15:44 mark).

company has a constitutional right to parade with arms in our cities and towns.” *Commonwealth v. Murphy*, 166 Mass. 171, 173 (1896).

9. Plaintiffs—the civilian government whose authority to protect public safety was undercut by unauthorized private armies on August 12, the Charlottesville residents who were terrorized that day, and the local businesses that have lost significant revenues as a result—seek declaratory and injunctive relief to prevent Defendants from returning to Virginia organized as military units and engaging in paramilitary activity. Without such relief, Charlottesville will be forced to relive the frightful spectacle of August 12: an invasion of roving paramilitary bands and unaccountable vigilante peacekeepers.

II. PARTIES

10. Plaintiff City of Charlottesville is a political subdivision of the Commonwealth of Virginia.

11. Plaintiff Champion Brewing Company, LLC, is a brewery and tap room founded in Charlottesville, Virginia, in 2012. Champion’s Charlottesville Tap Room and Brasserie Saison are located in downtown Charlottesville, and Champion’s packaged products advertise the restaurant’s Charlottesville location.

12. Plaintiff Escafé is a restaurant in downtown Charlottesville, Virginia, serving locally sourced, seasonal American cuisine. Escafé is incorporated under the name Estcafe, LLC.

13. Plaintiff MAS Tapas is a small Spanish restaurant located in the Belmont neighborhood of Charlottesville, Virginia, that believes in fostering diversity, community, and unity. MAS is incorporated under the name Sweet Potato & Rabe, LLC.

14. Plaintiff Maya Restaurant is a restaurant located in downtown Charlottesville, Virginia, that specializes in locally sourced southern food. Maya is incorporated under the name Backwater, Inc.

15. Plaintiff Quality Pie is a restaurant in the Belmont neighborhood of Charlottesville, Virginia. Quality Pie is currently undergoing renovations prior to its official opening. Quality Pie is incorporated under the name Avon 309 LLC.

16. Plaintiff Rapture Restaurant and Night Club is a restaurant, bar, and dance club located in downtown Charlottesville, Virginia, that specializes in southern cooking. Rapture is incorporated under the name Rapture, Inc.

17. Plaintiff Alakazam Toys and Gifts is an independent toy store located in downtown Charlottesville, Virginia, that seeks to foster creativity, exploration, and imaginative play. Alakazam is incorporated under the name AlakaZam LLC.

18. Plaintiff Alight Fund LLC is an investment firm that does business and has its principal offices in downtown Charlottesville, Virginia.

19. Plaintiff Angelo Jewelry is a contemporary jewelry gallery located in downtown Charlottesville, Virginia. Angelo Jewelry is incorporated under the name Marraccini Designs, Ltd.

20. Plaintiff Hays + Ewing Design Studio, PC, is an architectural design firm that does business and has its principal office in downtown Charlottesville, Virginia. Hays + Ewing focuses on green design, and many of its clients are individuals, families, and businesses considering moving to Charlottesville from other localities.

21. Plaintiff Wolf Ackerman Design, LLC, is an architectural design firm that does business and has its principal offices in downtown Charlottesville, Virginia. Wolf Ackerman

specializes in modern design, and the majority of its clients are commercial entities in Charlottesville, Virginia.

22. Plaintiff Williams Pentagram Corporation is a property owner in downtown Charlottesville, Virginia. Williams Pentagram owns properties located at 101 Third Street SE and 222 East Main Street, Charlottesville, Virginia.

23. Plaintiff Belmont-Carlton Neighborhood Association (BCNA) is a not-for-profit corporation that represents residents and businesses in the Belmont-Carlton area of southeast Charlottesville, Virginia. The Belmont-Carlton area lies between Sixth Street SE, Moore's Creek, and the CSX railroad. BCNA's mission is to identify and advocate for the needs of the Belmont-Carlton community.

24. Plaintiff Little High Neighborhood Association (LHNA) is an association of residents living within the Little High neighborhood of Charlottesville, Virginia. Established in 2016, LHNA is governed by a board of directors and includes over 50 dues-paying households in the Little High area. LHNA's mission includes maintaining the safety of the Little High neighborhood.

25. Plaintiff Woolen Mills Neighborhood Association (WMNA) is an association of residents living within the Woolen Mills neighborhood of Charlottesville, Virginia, and Albemarle County, Virginia. Established in 1980, WMNA is governed by a board of directors and comprised of all people residing within the Woolen Mills area who have expressed interest in the Association. WMNA's mission includes representing the interests of its residents and maintaining the Woolen Mills neighborhood as a wholesome, safe, and pleasant place to live.

26. Defendant Jason Kessler was one of the primary organizers of the Unite the Right rally on August 12, 2017, and the illegal paramilitary activity that occurred there. He solicited

and facilitated the attendance of alt-right paramilitary organizations and issued operational orders to them on August 12. In the weeks before the rally, Kessler also reached out to Defendant Christian Yingling of the Pennsylvania Light Foot Militia, as well as C.J. Ross of the Virginia Three Percenters—a local chapter of a nationwide militia organization—to request a private militia presence on August 12. He organized a torchlight rally in Charlottesville, Virginia, on May 13, 2017, which protested the removal of the Robert E. Lee statue in what has since been renamed Emancipation Park. Kessler believes that white people are currently being “ethnically cleans[ed] . . . from the face of the earth.”³ He is a resident of Charlottesville, Virginia.

27. Defendant Elliott Kline (who will be referred to throughout as “Eli Mosley,” his assumed name) was one of the primary organizers of the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017. He transmitted a set of General Orders to Unite the Right attendees and exercised supervisory command over alt-right groups’ paramilitary activities on August 12. He is currently the Chief Executive Officer of Identity Evropa, a white-supremacist group that attended the rally. A U.S. Army veteran, Mosley has described himself as the “command s[ergeant] major of the ‘alt-right.’”⁴ He recently moved to Virginia specifically to plan similar white-nationalist rallies in the Commonwealth.⁵

28. Defendant Traditionalist Worker Party (TWP) is a white-nationalist organization that claims to have 500 dues-paying members across three dozen chapters. According to its website, TWP’s mission is to “establish an independent White ethno-state in North America,”

³ See *the Sparks that Set Off Violence in Charlottesville* | *National Geographic*, YOUTUBE, Aug. 19, 2017, <https://www.youtube.com/watch?v=FDIfPhx-Fm0> (:36 mark).

⁴ Alexis Gravely et al., *Torch-Wielding White Nationalists March at U.Va.*, THE CAVALIER DAILY, Aug. 12, 2017, <http://www.cavalierdaily.com/article/2017/08/torch-wielding-white-nationalists-march-at-uva>.

⁵ Christopher Mathias & Andy Campbell, *How What Happened Here in Charlottesville Was Inevitable*, HUFFINGTON POST, Aug. 15, 2017, http://www.huffingtonpost.com/entry/charlottesville-was-inevitable-white-nationalist-rally_us_59907756e4b090964297ba58.

and it has “declare[d] war” against, among other things, “international Jewry.”⁶ TWP was founded in 2015 by Matthew Parrott and Defendant Matthew Heimbach. The group is a member of the Nationalist Front, an alliance of white-supremacist organizations that also includes Defendants Vanguard America, League of the South, and the National Socialist Movement. TWP attended the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017, and engaged in unlawful paramilitary activity.

29. Defendant Matthew Heimbach is the Chairman and one of the founders of TWP. He is also a leader of the Nationalist Front. Heimbach attended the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017, issuing tactical commands to TWP members. According to Heimbach, “They see me as their leader.”⁷

30. Defendant Cesar Hess is a regional coordinator of TWP. An “experienced combat veteran,”⁸ Hess served as the group’s commanding officer at the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017.

31. Defendant Vanguard America is a white-supremacist organization that opposes the notion of a multicultural America. Led by Dillon Irizarry (also known as Dillon Ulysses Hopper), a Marine Corps veteran from New Mexico, Vanguard America claims to have 200 members in 20 states. The group attended the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017, and engaged in unlawful paramilitary activity.

32. Defendant League of the South, Inc. is a “Southern Nationalist organization whose ultimate goal is a free and independent Southern republic.”⁹ Founded in 1994, the League

⁶ *25 Points*, TRADWORKER, <http://www.tradworker.org/points>.

⁷ *White Nationalists Matthew Heimbach, Richard Spencer on Their Controversial Beliefs: Part 2*, YOUTUBE, Aug. 19, 2017, <https://www.youtube.com/watch?v=7dT2azmfWl4&t=63s> (:54 mark).

⁸ Matt Parrott, *Catcher in the Reich: My Account of My Experience in Charlottesville*, Aug. 14, 2017, <https://steemit.com/altright/@mattparrott/catcher-in-the-reich-my-account-of-my-experience-in-charlottesville-by-matt-parrott>.

is a membership organization with chapters in at least 18 states. It is incorporated under the laws of Alabama. In a “directive” issued on February 2, 2017, Michael Hill, the League’s President, announced the establishment of a “Southern Defense Force” within the League. Hill called on “all able-bodied, traditionalist Southern men to join” the new group. He claimed that membership would “increase your proficiency with hand-to-hand defense skills, firearms training (both pistols and long weapons), and other related skills. Also, you will stand shoulder-to-shoulder with other Southern warriors in an organization dedicated to the survival, well-being, and independence of the Southern people.”¹⁰ The League attended the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017, and engaged in unlawful paramilitary activity.

33. Defendant Spencer Borum is the Chairman of the Kentucky chapter of the League of the South. He co-led the League’s procession to Emancipation Park on August 12, 2017, and initiated a violent clash by charging at counter-protestors with his flagpole.

34. Defendant Michael Tubbs is the Chairman of the Florida chapter of the League of the South, and Chief of Staff to the League’s President, Michael Hill. Along with Defendant Borum, Tubbs marched at the forefront of the League’s division as the group approached Emancipation Park. He fought in the ensuing melee and instigated several other violent confrontations throughout the day by ordering his men into battle. Tubbs spent four years in federal prison for stealing a huge cache of military weapons and explosives from his former employer, the U.S. Army.

35. Defendant National Socialist Movement (NSM) is a membership organization dedicated to “defending the rights of white people everywhere” and “promot[ing] . . . white

⁹ Michael Hill, *What Is the League of the South?*, LEAGUE OF THE SOUTH, <http://leagueofthesouth.com/about/>.

¹⁰ *Southern Defense Force Formed*, LEAGUE OF THE SOUTH, Feb. 2, 2017, <http://leagueofthesouth.com/southern-defense-force-formed/>.

separation.” The group maintains chapters in 48 states and limits its membership to “non-Semitic heterosexuals of European descent.”¹¹ All applicants for membership must detail their military training and skills. NSM is led by its “commander,” Defendant Jeff Schoep. NSM attended the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017, and engaged in unlawful paramilitary activity.

36. Defendant Jeff Schoep is the “commander” of the National Socialist Movement and “a warrior for the interests of White Americans.”¹² Schoep maintains a blog on the organization’s webpage called the “Commander’s Desk.”¹³ He is also a leader of the Nationalist Front. Schoep attended the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017, in his capacity as commander of the group.

37. Defendant Pennsylvania Light Foot Militia is a privately organized militia group with approximately 300 members spread over several local chapters. The group’s stated purpose is to keep the peace at public gatherings. Operating entirely outside established law-enforcement processes, its members—dressed and armed like battle-ready soldiers—station themselves at public events that they claim pose a risk of violence. Under the command of Defendant Christian Yingling, heavily armed members of the Pennsylvania Light Foot Militia deployed to Emancipation Park in Charlottesville, Virginia, on August 12, 2017, fanning out to take up strategic posts—purportedly to provide security for the Unite the Right rally.

38. Defendant Christian Yingling is the Commanding Officer of the Pennsylvania Light Foot Militia and of one of its constituent units, the Laurel Highlands Ghost Company. The Ghost Company has about a dozen members and is based near Yingling’s home in New Derry,

¹¹ *America’s National Socialist Party*, NATIONAL SOCIALIST MOVEMENT, <https://web.archive.org/web/20170829205617/http://www.nsm88.org/aboutus.html>.

¹² *Leadership*, THE NATIONALIST FRONT, <https://www.nfunity.org/leadership/>.

¹³ Jeff Schoep, *The Commander’s Desk*, NATIONAL SOCIALIST MOVEMENT, <https://web.archive.org/web/20170830042016/http://www.nsm88.org/commandersdesk/>.

Pennsylvania. Yingling exercised tactical command over a group of 32 heavily armed militiamen at Emancipation Park in Charlottesville, Virginia, on August 12, 2017.

39. Defendant New York Light Foot Militia, like its Pennsylvania counterpart, is a private militia organization whose members stand guard at public events. Under the command of Defendants Christian Yingling and George Curbelo, heavily armed members of the New York Light Foot Militia took up posts at Emancipation Park in Charlottesville, Virginia, on August 12, 2017, purportedly to provide security for the Unite the Right rally.

40. Defendant George Curbelo is the Commanding Officer of the New York Light Foot Militia. He was Yingling's "second in command" at Emancipation Park in Charlottesville on August 12, 2017.¹⁴ Curbelo issued directives to other militiamen at the rally and reported exerting significant effort "to maintain . . . discipline" among his militia members.¹⁵

41. Defendant Virginia Minutemen Militia is "a statewide community based militia, with 16 brigades set up throughout the state of Virginia."¹⁶ The group was established to train a corps of private, unlicensed peacekeepers to be deployed at public gatherings. It coordinated with Yingling and Curbelo to secure a cohesive, multi-regional militia presence at the Unite the Right rally on August 12, 2017, including by contributing some of its own members. According to Curbelo, the commander of the Virginia Minutemen Militia retained "centralized command" (as opposed Yingling's "tactical command") over the 32-person militia regiment on August 12.¹⁷

42. Defendant American Freedom Keepers, LLC, is a private militia organization and for-profit company headquartered in Vancouver, Washington. The group seeks "to further the

¹⁴ Liberty Den Home of the American Patriot (George Curbelo), *After-Action Report*, FACEBOOK, Aug. 13, 2017, <https://www.facebook.com/TheLibertyDen/videos/1631991076819081/> (11:27 mark).

¹⁵ Sarah Wallace, *New York Militia Group Speaks Out on Charlottesville Response, Hate and Bloodshed*, NBC NEW YORK, Aug. 21, 2017, <http://www.nbcnewyork.com/investigations/Militia-New-York-Light-Catskill-Training-Charlottesville-Response-White-Nationalist-Violence-441311083.html>.

¹⁶ VA MINUTEMEN MILITIA, TWITTER, <https://twitter.com/VaMinutemen>.

¹⁷ Curbelo, *supra* note 14 (11:14 mark).

Patriot movement across our great country” through “nationwide organization, communication, and . . . our unique ground effort mission.”¹⁸ American Freedom Keepers contributed personnel to the 32-person militia commanded by Defendant Yingling in Charlottesville, Virginia, on August 12, 2017.

43. Defendant Francis Marion is the President and a founder of American Freedom Keepers, LLC. A military veteran, he is active in the militia movement; in that capacity, he regularly patrols contentious public gatherings armed with tactical gear and military-style weaponry. Marion traveled to Charlottesville, Virginia, for the Unite the Right rally and served under Christian Yingling’s command on August 12, 2017. Marion’s avowed purpose was to “keep the peace.”¹⁹

44. Defendant American Warrior Revolution (AWR) is a paramilitary group associated with a merchandising and media outlet. Its mission is to keep the peace at public gatherings. AWR is active in the militia movement and maintains regular contact with other like-minded groups. Several AWR members served under Christian Yingling’s command at the Unite the Right rally on August 12, 2017, in Charlottesville, Virginia.

45. Defendant Ace Baker is the leader of Defendant AWR. He traveled to Charlottesville, Virginia, for the Unite the Right rally and served under Christian Yingling’s command on August 12, 2017.

46. Defendant Redneck Revolt is a national network of community-defense projects with a pro-worker, anti-racist orientation. Redneck Revolt was founded in June 2016 and

¹⁸ “What is the Difference Between AFK and AWR?,” *Frequently Asked Questions*, AMERICAN FREEDOM KEEPERS, <https://americanfreedomkeepers.com/>.

¹⁹ American Freedom Keepers (Francis Marion), *After-Action Report #1*, FACEBOOK, Aug. 13, 2017, <https://www.facebook.com/AmericanFreedomKeepers/videos/1536543569738451/> (12:22 mark).

maintains over 30 branches. It describes itself as a “militant formation”²⁰—a left-wing “alternative for people who might otherwise join the growing right-wing militia movement.”²¹ Many of its branches have formed John Brown Gun Clubs, through which members train themselves in defense tactics. The group believes that “[w]e have to be prepared to take the defense of our communities into our own hands.”²² Armed Redneck Revolt members stood post paramilitary-style at Justice Park in Charlottesville, Virginia, on August 12, 2017, for the avowed purpose of protecting counter-protestors within the park.

47. Defendant Socialist Rifle Association is an “anti-fascist, anti-racist, anti-capitalist” organization that aims to “arm and train the working class” for collective self-defense.²³ Its members stood alongside Redneck Revolt in Justice Park on August 12, 2017, openly displaying assault rifles to provide a protective buffer for counter-protestors within the park.

III. JURISDICTION AND VENUE

48. This Court has subject-matter jurisdiction over this action pursuant to Virginia Code §§ 17.1-513 and 8.01-620.

49. Venue is proper in this circuit under Virginia Code § 8.01-261(15).

IV. LEGAL BACKGROUND

50. The Commonwealth of Virginia has carefully regulated the circumstances under which military force may lawfully be employed. Article I, Section 13 of the Virginia

²⁰ *Organizing Principles*, REDNECK REVOLT, <https://www.redneckrevolt.org/principles>.

²¹ Cecilia Saixue Watt, *Redneck Revolt: The Armed Leftwing Group that Wants to Stamp Out Fascism*, THE GUARDIAN, July 11, 2017, <https://www.theguardian.com/us-news/2017/jul/11/redneck-revolt-guns-anti-racism-fascism-far-left>.

²² RedneckRevolt, FACEBOOK, <https://www.facebook.com/RedneckRevolt/posts/620697418318897>.

²³ SOCIALIST RIFLE ASSOCIATION, <https://www.socialistra.org/news/index.html>.

Constitution specifies that “in all cases the military should be under strict subordination to, and governed by, the civil power.”

51. A network of statutory provisions structuring Virginia’s armed forces helps preserve the civil government’s monopoly on organized peacekeeping. State law permits the Commonwealth to “maintain only such troops” as prescribed therein. Va. Code Ann. § 44-6. It also divides “the militia”—those authorized to use military force on the Commonwealth’s behalf—into just four classes: the National Guard, the Virginia Defense Force, the naval militia, and the unorganized militia. *Id.* § 44-1.

52. By statute, the militia may operate only under the strict control of governmental officials. All military personnel are ultimately subordinate to the Governor, who is “Commander in Chief of the armed forces of the Commonwealth.” *Id.* § 44-8. Virginia’s Department of Military Affairs is charged with administering, employing, and training the militia. *Id.* §§ 44-11.1(A)(1), (8), 44-75.2. Each part of Virginia’s armed forces answers to the Adjutant General, who exercises “command of all of the militia of the Commonwealth, subject to the orders of the Governor as Commander in Chief.” *Id.* § 44-13.

53. To achieve state control over military personnel, Virginia’s armed forces must conform to a suite of state-law requirements. All members of the National Guard must sign an enlistment contract and swear an enlistment oath. *Id.* § 44-36. State law regulates the composition and organization of both the National Guard and the Virginia Defense Force. *Id.* §§ 44-25, 44-54.4, 44-54.5. It also determines their manner of dress, what arms they may carry (and when), what equipment they use, how and when they train, and how they may be disciplined or punished. *Id.* §§ 44-39, 44-40, 44-41, 44-42, 44-54.9, 44-54.10, 44-54.12, 44-

75.2. And the unorganized militia, whenever ordered out, is “governed by the same rules and regulations and [is] subject to the same penalties as the National Guard.” *Id.* § 44-85.

54. State law also delineates the circumstances under which Virginia’s armed forces may be used. The Governor is empowered to call forth any part of the militia when a state agency is “in need of assistance to perform particular law-enforcement functions,” *id.* § 44-75.1(A)(3), and he may deploy the National Guard or the unorganized militia “in order to execute the law,” *id.* § 44-86. Among the enumerated responsibilities of the Department of Military Affairs is “maintaining order and public safety.” *Id.* § 44-11.1(A)(3).

55. To preserve the critical principle of civil-military accountability, Virginia has further criminalized “paramilitary activity.” *Id.* § 18.2-433.2. Identifying such activity as a “Crime[] Against Peace and Order,” the prohibition aims to ensure that private groups will not use “technique[s] capable of causing injury or death . . . in, or in furtherance of, a civil disorder.” *Id.* The legislature specifically excluded—and thus consciously chose not to restrict—such lawful individual pursuits as hunting, target shooting, and firearms collecting. *Id.* § 18.2-433.3(4).

56. Other Virginia statutes underscore the harm that results when armed private groups interfere with regularized, state-driven peacekeeping efforts. Under state law, “The police force of a locality” is responsible for “the safeguard of life and property” and “the preservation of peace.” *Id.* § 15.2-1704(A). To exercise these functions, police officers must meet several minimum qualifications and complete a statewide certification exam. *Id.* §§ 15.2-1705(A), 1706(A). Virginia has even criminalized the act of unregulated peacekeeping: It is unlawful to “falsely assume[] or exercise[] the functions, powers, duties, and privileges incident

to the office of sheriff, police officer, marshal, or other peace officer, or any local, city, county, state, or federal law-enforcement officer.” *Id.* § 18.2-174.

57. In addition to these minimum qualifications, all machine guns brought into the Commonwealth must be registered with the Department of State Police within 24 hours. *See id.* § 18.2-295. It is also a crime to “hold a firearm . . . in a public place in such a manner as to reasonably induce fear in the mind of another of being shot or injured.” *Id.* § 18.2-282(A).

58. To allow citizens and state officials to distinguish between official and self-appointed law-enforcement personnel, the Virginia Code includes a “Protection of the Uniform” provision. It is generally unlawful for anyone not a member of the armed forces of the United States “to wear the duly prescribed uniform thereof, or any distinctive part of such uniform, or a uniform any part of which is similar to a distinctive part of [such] uniform.” *Id.* § 44-120. Because Virginia National Guard members are generally to wear “the same type of uniform . . . provided for the armed forces of the United States,” *id.* § 44-39, that provision reinforces the National Guard’s authority and tactical effectiveness. Although the statute carves out several exemptions, private militia activity is not among them. Even the uniform and insignia of the Virginia Defense Force must “include distinctive devices identifying it as a state defense force and distinguishing it from the National Guard or the armed forces of the United States.” *Id.* § 44-54.9.

59. Finally, Virginia law heavily regulates the provision of private security services, with the goal of “secur[ing] the public safety and welfare against incompetent, unqualified, unscrupulous, or unfit persons” occupying those roles. *Id.* § 9.1-141(C). Every business providing such services must be licensed by Virginia’s Department of Criminal Justice Services, and every person employed as an armed security officer must be registered with the Department.

Id. § 9.1-139(A). Certain kinds of criminal convictions preclude licensing and registration. *Id.* § 9.1-139(K). Every private security business must maintain an insurance policy, *id.* § 9.1-144(A); every employee of such a business must complete a proper training course, *id.* § 9.1-141(A); and the providers of such training must first submit their fingerprints to the Department for a comprehensive criminal-background check, *id.* § 9.1-145(A). It is illegal under Virginia law to operate a private security services business without complying with each of these provisions. *Id.* § 9.1-147(A)(1), (4).

60. This comprehensive legislative regime, in conjunction with the Virginia Constitution, enables the Commonwealth to maintain a firm grip over military activity and military personnel operating within its borders. For, as the Virginia Constitution’s architects knew, “a *well regulated* militia . . . is the proper, natural, and safe defense of a free state.” Va. Const. art. I, § 13 (emphasis added).

V. FACTUAL ALLEGATIONS

A. Unite the Right: Charlottesville Transformed into a Military Theater

61. On the night of August 11, 2017, hundreds of white nationalists strode through the University of Virginia, their faces illuminated by tiki torches. The campus resounded with such white-nationalist mantras as “Blood and soil!” and “Jews will not replace us!” As their route came to an end, the marchers encircled a small handful of counter-protesters near the Thomas Jefferson statue at the base of the Rotunda. Alt-right attendees threw punches and even torches at the outnumbered counter-protesters.²⁴ After several counter-protestors were injured in the attack, the police intervened to declare an unlawful assembly, forcing the marchers to disperse.

²⁴ Alex Rubinstein, TWITTER, Aug. 11, 2017, 10:43 PM, <https://twitter.com/RealAlexRubi/status/896200377099587585>.

62. The following morning began with a solemn tribute to togetherness. Clergy from a range of faith traditions packed the pews for a sunrise service at First Baptist Church in Charlottesville. After strengthening their resolve to meet malice with love, the clergy locked hands with community members and marched toward the turmoil that would await them. They split into two groups—one headed to McGuffey Park, and the other to nearby Emancipation Park.

63. The latter group engaged in nonviolent direct action, risking their bodies as counter-witnesses to racially fueled aggression and claims of ethnic superiority. They persisted despite being told that, if they “were not prepared to die that day, [they] should not attend this protest.”²⁵ One participating evangelical recalled that “[i]t really felt like every step you take could be your last.”²⁶

Private Militias Unlawfully Purport to “Keep the Peace”

64. When the clergy arrived at Emancipation Park around 9:00 AM on August 12, 2017, they encountered a terrifying scene: a company of heavily armed men clothed in camouflage and deployed in parallel columns. That group—a self-organized, self-designated private militia unit unaccountable to the civil power—had convoyed in to Charlottesville between 7:00 and 7:30 AM. They had gathered together the previous evening at a farm in Unionville, Virginia,²⁷ where they engaged in joint training exercises.

65. The militia boasted 32 members. Its tactical commander was Defendant Christian Yingling, the Commanding Officer of the Pennsylvania Light Foot Militia. His second-in-command was Defendant George Curbelo, the Commanding Officer of the New York Light Foot

²⁵ “*Antifa Saved Their Lives*”: *Report from the Clergy at Charlottesville*, IT’S GOING DOWN, Aug. 23, 2017, <https://itsgoingdown.org/antifa-saved-their-lives-report-from-clergy-at-charlottesville/>.

²⁶ Jack Jenkins, *Meet the Clergy Who Stared Down White Supremacists in Charlottesville*, THINKPROGRESS, Aug. 16, 2017, <https://thinkprogress.org/clergy-in-charlottesville-e95752415c3e/>.

²⁷ Curbelo, *supra* note 14 (10:57 mark).

Militia. Yingling and Curbelo described their experiences in great detail in lengthy Facebook videos they uploaded on August 13, 2017, as well as in interviews they granted to local and national news organizations.

66. According to Defendant Yingling, the organizers of Unite the Right had contacted him and requested a private militia force to act as security.²⁸ He later accepted a similar request from the Virginia Minutemen Militia, which wanted him “to reinforce their numbers”²⁹ and take “tactical command” of the operation.³⁰ Yingling had overseen the militia response at several right-wing gatherings in recent months, including in Gettysburg and Harrisburg, Pennsylvania.³¹ In a Facebook video, Defendant Curbelo confirmed that “[w]e showed up on the request of the Virginia Minutemen Militia.”³²

67. Defendant Yingling assembled his regiment through Facebook and several militia chatrooms. The group, which he described as “a coalition of various militia units from throughout the East,”³³ included personnel from Yingling’s Pennsylvania Light Foot Militia, Defendant Curbelo’s New York Light Foot Militia, Defendant Francis Marion’s American Freedom Keepers, and Defendant Ace Baker’s American Warrior Revolution. The local Virginia Minutemen Militia also contributed troops.³⁴ Defendant Marion has stated that he, the

²⁸ Joanna Walters, *Militia Leaders Who Descended on Charlottesville Condemn “Rightwing Lunatics”*, THE GUARDIAN, Aug. 15, 2017, <https://www.theguardian.com/us-news/2017/aug/15/charlottesville-militia-free-speech-violence>.

²⁹ *Id.*

³⁰ Paul Duggan, *Militiamen Came to Charlottesville as Neutral First Amendment Protectors*, Commander Says, WASH. POST, Aug. 13, 2017, https://www.washingtonpost.com/local/trafficandcommuting/militiamen-came-to-charlottesville-as-neutral-first-amendment-protectors-commander-says/2017/08/13/d3928794-8055-11e7-ab27-1a21a8e006ab_story.html.

³¹ *Id.*

³² Curbelo, *supra* note 14 (11:06 mark).

³³ Christian Yingling, *After-Action Report*, FACEBOOK, Aug. 13, 2017, <https://www.facebook.com/christiaan.yingling/videos/699494596911234/> (2:03 mark).

³⁴ See Brennan Gilmore, TWITTER, Aug. 12, 2017, 11:53 AM, <https://twitter.com/brennanmgilmore/status/896399305996742656> (showing a member of Yingling’s group wearing a “Minutemen Militia” patch).

New York Light Foot Militia, and the Virginia Minutemen Militia discussed logistics and shared intelligence for at least a month leading up to the rally.³⁵

68. Once the militia group arrived in Charlottesville, Defendant Yingling gave his troops a “pre-op briefing”³⁶—“what we were there to do, how we were gonna do it.”³⁷ By all accounts, Yingling was the chief tactician of a militia unit observing a well-defined chain of command. He spoke of the men who “f[e]ll under my command”³⁸ and “serv[ed] under me.”³⁹ He also issued a “very specific instruction . . . to direct all press to myself or George Curbelo.”⁴⁰ When Brian Moran, Virginia’s Secretary of Public Safety and Homeland Security, approached the militia to introduce himself, he experienced the unit’s hierarchy firsthand: Militia members told him to speak with their “commanding officer.” Yingling’s men also used radios and headsets to facilitate the transmission of orders.

69. Militia members carried between 60 and 80 pounds of camouflaged, military-style equipment. Among their paraphernalia were semiautomatic AR-15 assault rifles, with spare 30-round magazines; sidearms; tactical shooting glasses; kevlar helmets; combat shirts and pants; AK-47-resistant Level III body armor; pocket knives; nightstick-style batons; combat boots; military-surplus gas masks; and personal first-aid kits.⁴¹ Defendant Yingling personally carried a Sig Sauer AR-556 semiautomatic rifle.⁴² His unit kept their trigger fingers on or near the

³⁵ American Freedom Keepers (Francis Marion), *Charlottesville After-Action Report #2*, FACEBOOK, Aug. 14, 2017, <https://www.facebook.com/AmericanFreedomKeepers/videos/1537612629631545/> (58:30 mark).

³⁶ Yingling, *supra* note 33 (5:21 mark).

³⁷ *Id.* (3:39 mark).

³⁸ *Id.* (2:25 mark).

³⁹ Duggan, *supra* note 30.

⁴⁰ Yingling, *supra* note 33 (39:44 mark).

⁴¹ See Joanna Walters, *Mistaken for the Military: The Gear Carried by the Charlottesville Militia*, THE GUARDIAN, Aug. 15, 2017, <https://www.theguardian.com/us-news/2017/aug/15/charlottesville-militia-security-gear-uniforms>.

⁴² Duggan, *supra* note 30.

triggers of their primary weapons as they stood guard over the Unite the Right rally.⁴³ Yingling told the *Washington Post* that the rifles' magazines were fully loaded, and that their sidearms were "chambered and ready to go."⁴⁴ Another militia member stated that his semiautomatic weapon could "put out 30 rounds in less than three seconds."⁴⁵

70. Yingling and Curbelo openly characterize their militia as assuming functions ordinarily performed by state security forces. In their own words, carrying weapons of war enables them to "to keep the peace,"⁴⁶ "to protect everybody,"⁴⁷ to "tak[e] care of your community,"⁴⁸ "to hold the line of peace,"⁴⁹ and to act as a "peacekeeping force."⁵⁰

71. One member of Yingling's group also wore a rectangular "MEDIC" patch on his camouflage uniform,⁵¹ despite Virginia's prohibition on "impersonat[ing] . . . an emergency medical services provider." Va. Code Ann. §18.2-174.1.

72. After gearing up together, Yingling's militia marched in formation through downtown streets and sidewalks.⁵² They arranged themselves into two inward-facing lines near

⁴³ See, e.g., American Freedom Keepers (Francis Marion), *Charlottesville Live-Stream #1*, FACEBOOK, Aug. 12, 2017, <https://www.facebook.com/AmericanFreedomKeepers/videos/1535388346520640> (19:35 mark) (showing Defendant Curbelo).

⁴⁴ Duggan, *supra* note 30.

⁴⁵ Jason Turner, *Charlottesville Live-Stream #2*, FACEBOOK, Aug. 12, 2017, <https://www.facebook.com/jason.turner.5602/videos/1484854948227159/> (47:11 mark).

⁴⁶ Curbelo, *supra* note 14 (5:34 mark).

⁴⁷ Julian Routh, *Who is Christian Yingling: Far-Right Militia Leader or Protector of the Constitution?*, PITTSBURG POST-GAZ., Aug. 16, 2017, <http://www.post-gazette.com/local/region/2017/08/16/christian-yingling-pa-militia-latrobe-charlottesville-va-rally-white-supremacist/stories/201708160063>.

⁴⁸ *Id.*

⁴⁹ Curbelo, *supra* note 14 (34:36 mark).

⁵⁰ Liberty Den Home of the American Patriot (George Curbelo), FACEBOOK, Aug. 8, 2017, <https://www.facebook.com/TheLibertyDen/videos/1627027737315415> (3:39 mark).

⁵¹ Christopher Mathias, TWITTER, Aug. 12, 2017, 9:19 AM, <https://twitter.com/letsgomathias/status/896360475918782465>.

⁵² Craig Stanley, TWITTER, Aug. 12, 2017, 8:33 AM, https://twitter.com/_CraigStanley/status/896349016929206272.

the south border of Emancipation Park.⁵³ Attendees struggled to comprehend the spectacle of an infantry unit patrolling a public park. Local residents and clergy members feared a bloodbath, not knowing what might cause the self-assigned guardians of a white-nationalist gathering to open fire. And many observers initially mistook the camouflage-clad militia for the state-sanctioned National Guard.

73. Approximately three blocks east of Emancipation Park, two other private militia groups stationed themselves near Justice Park, where they helped create and secure a staging area for counter-protestors. The first group, Redneck Revolt, had issued a “Call to Arms for Charlottesville” on its website on August 10, 2017.⁵⁴ Redneck Revolt refused to “[l]et[] fascists organize publicly . . . without challenge,” pledging to “dust[] off the guns of 1921.” The missive assured “the people of Charlottesville and . . . all oppressed peoples” that “Redneck Revolt and the John Brown Gun Club are at your disposal.”

74. An article published on Redneck Revolt’s website entitled “Reportback: Charlottesville” details the group’s involvement on August 11 and 12. According to the report, “Five Redneck Revolt branches from nearby towns have been on the ground in Charlottesville since [Friday, August 11].”⁵⁵ On Friday evening, “Armed Redneck Revolt members were on-hand to assist with security” at St. Paul’s Memorial Church, near the white nationalists’ torchlit

⁵³ For early video footage of one of the two lines, see Christopher Mathias, TWITTER, Aug. 12, 2017, 9:09 AM, <https://twitter.com/letsgomathias/status/896358048918327297>.

⁵⁴ See *Call to Arms for Charlottesville*, REDNECK REVOLT, Aug. 10, 2017, <https://www.redneckrevolt.org/single-post/CALL-TO-ARMS-FOR-CHARLOTTESVILLE>.

⁵⁵ *Reportback: Charlottesville*, REDNECK REVOLT, Aug. 12, 2017, <https://www.redneckrevolt.org/single-post/REPORTBACK-CHARLOTTESVILLE>.

rally.⁵⁶ And on Saturday, the organization claims, “Approximately 20 [of its] members created a security perimeter around [Justice] [P]ark, most of them open-carrying tactical rifles.”⁵⁷

75. A second group, the Socialist Rifle Association (SRA), also contributed members to the security perimeter around Justice Park. Redneck Revolt “work[ed] closely with the SRA” and “especially appreciat[ed] . . . the camaraderie of the SRA.”⁵⁸ The SRA likewise expressed gratitude for the “Redneck Revolt heroes who held the line against Nazi scum.”⁵⁹

76. Also in Justice Park on August 12 were employees of H&H Security Services, Inc., a Charlottesville-based private security firm. H&H had been hired for the day by People’s Action for Racial Justice, a non-violent activist group that organized counter-protests stationed at McGuffey Park and Justice Park in Charlottesville. In stark contrast to the paramilitary organizations that attended the event, H&H Security is licensed by the Virginia Department of Criminal Justice Services to provide private security services, and attended in that duly regulated capacity.

Alt-Right Groups Terrorize Charlottesville with Military Tactics

77. Tensions continued to boil as alt-right groups arrived at Emancipation Park throughout the morning. They rode into town together in large white shuttle vans rented for that purpose.⁶⁰ One by one, the Alt-Right Defendants marched toward the Park in a show of military pageantry. They brought helmets, wore distinctive uniforms, wielded heavy shields, armed themselves with clubs, and carried flags and banners bearing the groups’ insignia.

⁵⁶ *Id.*

⁵⁷ *Id.*; see also George Squares, TWITTER, Aug. 12, 2017, 2:26 PM, <https://twitter.com/GeorgeSquares/status/896437856473894912>; *EPIC FOOTAGE of the #Charlottesville #UniteTheRight Rally Shut Down*, YOUTUBE, Aug. 14, 2017, <https://www.youtube.com/watch?v=2MH4XTmrh7U> (1:30 mark).

⁵⁸ *Reportback*, *supra* note 55.

⁵⁹ Socialist Rifle Association Backup, FACEBOOK, Aug. 15, 2017, <https://www.facebook.com/SocialistRA/posts/756727061174031>.

⁶⁰ For a rider’s-eye view of the procession, see *Unite the Right - Charlottesville*, YOUTUBE, Sept. 8, 2017, https://www.youtube.com/watch?v=IgeYbjxT_j8 (:08 mark).

78. As the clergy sang “This Little Light of Mine”⁶¹ and chanted “Love has already won!,”⁶² battle-ready alt-right groups roared in unison with such chants as “Fuck you, faggots!,”⁶³ “Gas the kikes now!,”⁶⁴ “Blood and soil!,”⁶⁵ “Commie scum—off our streets!,”⁶⁶ “White lives matter!,”⁶⁷ and “Jews will not replace us!”

79. Defendant Vanguard America arrived in downtown Charlottesville around 9:30 AM. Its members wore matching uniforms of white polo shirts and khaki pants, and most wore black sunglasses or goggles. Wielding shields and carrying flags with the group’s insignia, they “marched in military-style formation”⁶⁸ behind Defendant Eli Mosley, one of the rally’s co-organizers, chanting “You will not replace us!” at counter-protestors in nearby Justice Park. Vanguard’s chant changed to “Blood and soil!,” a Nazi slogan, after its members turned right on Market Street and made their way toward Emancipation Park.⁶⁹

⁶¹ *Clergy #unitetheright #Charlottesville*, YOUTUBE, Aug. 16, 2017, <https://www.youtube.com/watch?v=RGSGf550NYA>; *Let It Shine #unitetheright #Charlottesville*, YOUTUBE, Aug. 16, 2017, <https://www.youtube.com/watch?v=jqFnGE3FeGw>.

⁶² Christopher Mathias, TWITTER, Aug. 12, 2017, 10:19 AM, <https://twitter.com/letsgomathias/status/896375699501711361>.

⁶³ Christopher Mathias, TWITTER, Aug. 12, 2017, 10:35 AM, <https://twitter.com/letsgomathias/status/896379733050634240>; *Behind the Scenes Footage of “Unite the Right” White Nationalist Rally in Charlottesville VA Part 7*, YOUTUBE, Aug. 18, 2017, <https://www.youtube.com/watch?v=4gY8R3Bg-RE> (:32 mark).

⁶⁴ *Black Lives Do Not Matter #charlottesville #unitetheright*, YOUTUBE, Aug. 12, 2017, <https://www.youtube.com/watch?v=Mn3XF9xzkO8> (:05 mark).

⁶⁵ Christopher Mathias, TWITTER, Aug. 12, 2017, 9:25 AM, <https://twitter.com/letsgomathias/status/896361902804267009>.

⁶⁶ Christopher Mathias, TWITTER, Aug. 12, 2017, 10:57 AM, <https://twitter.com/letsgomathias/status/896385163818659841>.

⁶⁷ *Behind the Scenes Footage of “Unite the Right” White Nationalist Rally in Charlottesville VA Part 5*, YOUTUBE, Aug. 18, 2017, <https://www.youtube.com/watch?v=mn7NTQcKvd4> (1:46 mark).

⁶⁸ Jason Wilson, *Charlottesville: Man Charged with Murder Was Pictured at Neo-Nazi Rally*, THE GUARDIAN, Aug. 13, 2017, <https://www.theguardian.com/us-news/2017/aug/13/charlottesville-james-fields-charged-with-was-pictured-at-neo-nazi-rally-vanguard-america>.

⁶⁹ *Vanguard America Marches into Emancipation Park Chanting “Blood and Soil”*, YOUTUBE, Aug. 13, 2017, <https://www.youtube.com/watch?v=hyWdm8AunAw>; Craig Stanley, TWITTER, Aug. 12, 2017, 9:38 AM, https://twitter.com/_CraigStanley/status/896365259258200068.

80. Later-arriving groups simply bulldozed anyone who slowed down their entry. “All right, guys, we’re busting through!” one alt-right attendee informed his shield-carrying associates.⁷⁰ Defendant League of the South epitomized this technique by plowing through a line of counter-protestors. Defendant Spencer Borum, Chairman of the League’s Kentucky chapter, triggered a violent melee by charging at counter-protestors with his flagpole.⁷¹ Nearly a dozen League members rushed in from behind, ramming into the crowd with their matching shields held in formation.⁷²

81. Matthew Parrott, Director of the Traditionalist Worker Party, offered the following account of the League’s rehearsed assault: “With a full-throated rebel yell, the League broke through the wall of degenerates . . . [Defendant] Michael Tubbs, an especially imposing League organizer[,] towered over and pushed through the antifa like a Tyrannosaurus . . . as [L]eague fighters with shields put their training to work.”⁷³ An eyewitness remarked at the time that “they’re just forcing their way through with their shields.”⁷⁴ Militia member Rob Kapp described the League’s offensive as “pretty brutal”—“like barbarians on a battlefield.”⁷⁵

82. Defendant Traditionalist Worker Party (TWP) entered immediately behind the League. Its members wore matching black uniforms and helmets. TWP’s commanding officer

⁷⁰ *James Allsup and Racist Friends at CHARLOTTESVILLE #UNITETHERIGHT*, YOUTUBE, Aug. 13, 2017, <https://www.youtube.com/watch?v=qzWIs1zNx2U> (1:15 mark).

⁷¹ *Charlottesville White Nationalist Rally; 1 Killed 34 Injured Part 1/3. August 12, 2017*, YOUTUBE, Aug. 12, 2017, <https://www.youtube.com/watch?v=kZCkwVp-jPY> (:06 mark); *USA: Explosive Violence Breaks Out at Alt-Right Rally in Charlottesville*, YOUTUBE, Aug. 12, 2017, <https://www.youtube.com/watch?v=FLgpz2LjIgA> (:01 mark).

⁷² *Fascists Attack Counter-Protest in Charlottesville While Police Stand Aside*, VIMEO, Aug. 16, 2017, <https://vimeo.com/229919629> (:05 mark). For another perspective of the violence, see Craig Stanley, TWITTER, Aug. 12, 10:56 AM, https://twitter.com/_CraigStanley/status/896384861187051520.

⁷³ Parrott, *supra* note 8.

⁷⁴ *A IGLY, EAUTIFUL GRAND ALT-RIGHT ENTRANCE into & Through the “Alt-Left” in Charlottesville*, YOUTUBE, Aug. 16, 2017, <https://www.youtube.com/watch?v=tneHx3jg0Yk> (1:01 mark).

⁷⁵ Rob Kapp, *Charlottesville Live-Stream #2*, FACEBOOK, Aug. 12, 2017, <https://www.facebook.com/rob.kapp.1/videos/889452967860017/> (2:39 mark).

was Defendant Cesar Hess, a regional coordinator and an “experienced combat veteran.”⁷⁶ He directed his men to proceed by exclaiming, “Let’s go! Forward!”⁷⁷ Defendant Matthew Heimbach also served as an operational leader that day. He shouted “shields up!” as the League stormed counter-protestors just ahead. TWP then joined the charge amid an instruction to “push!”⁷⁸ Moments later, League members shoved a counter-protestor to the pavement, screamed “Leave!” and “Get the fuck out of here!,” spat in her face, and pepper-sprayed her at point-blank range.⁷⁹

83. Defendant National Socialist Movement (NSM) trailed TWP in the militarized parade down Market Street.⁸⁰ A large rectangular banner announced the group’s presence; shields, flagpoles, helmets, and goggles steeled them for battle. NSM entered Emancipation Park under the command of Defendant Jeff Schoep.⁸¹

84. The Alt-Right Defendants did not come to Charlottesville merely to espouse their controversial ideas in a public park. They came to coerce and terrorize. In Defendant Yingling’s words, “They weren’t there to protect the statue. They were there to fight. And it didn’t take long.”⁸² Another eyewitness described the Alt-Right Defendants’ techniques in real time: “They make this line, and then they’ll approach the [counter-protestors] in that aggressive posture with weapons-bearing, and instigate. . . . They came here to battle, for war.”⁸³ Robert “Azzmador”

⁷⁶ Parrott, *supra* note 8.

⁷⁷ *Explosive Violence*, *supra* note 71 (2:08 mark).

⁷⁸ *Raw Footage of the Violence at Lee Park, Charlottesville*, YOUTUBE, Aug. 14, 2017, <https://www.youtube.com/watch?v=Thhd-VM6mW4> (:06 mark).

⁷⁹ *Id.* (:30 mark); *see also* *ALT-RIGHT ENTRANCE*, *supra* note 74 (1:25 mark); *Fight #unitetheright #Charlottesville*, YOUTUBE, Aug. 16, 2017, <https://www.youtube.com/watch?v=axOL-ZVNiyo> (:05 mark).

⁸⁰ Christopher Mathias, TWITTER, Aug. 12, 2017, 10:57 AM, <https://twitter.com/letsgomathias/status/896385163818659841> (:38 mark).

⁸¹ *ALT-RIGHT ENTRANCE*, *supra* note 74 (6:22 mark).

⁸² Yingling, *supra* note 33 (12:39 mark).

⁸³ *Alt-Right Attacks Police in Charlottesville*, YOUTUBE, Aug. 12, 2017, <https://www.youtube.com/watch?v=gQmoWS9cuXE> (13:02 mark).

Ray, a prominent Neo-Nazi figure, boasted that the alt-right movement's battle tactics would make Charlottesville residents "afraid to leave their house!"⁸⁴

85. Once inside Emancipation Park—the area to which the rally's permit extended—the Alt-Right Defendants did not remain there to give or listen to speeches. Instead, they repeatedly exited the Park in organized bands to clash violently with counter-protestors on the streets below.⁸⁵ In one of these highly coordinated sorties, the League's Chief of Staff, Defendant Michael Tubbs, screamed "Follow me!" and motioned for his men to accompany him down the southeast stairs of Emancipation Park. The battalion rushed into the street, assaulting nearby counter-protestors with a cascade of clubs and shields.⁸⁶ As his crew stared down their intended foes and wielded flagpoles like javelins,⁸⁷ Tubbs shouted, "Shields forward!"⁸⁸ And again: "Shields forward! Shields forward!"⁸⁹

86. Defendant Cesar Hess initiated combat in this way, as well. "Let's go!" he commanded TWP members carrying clubs and clear riot shields. "Get ready to fucking fight! Let's go!"⁹⁰ TWP members then streamed down the stairs with their weapons ready. Throughout the day, Hess also "worked with the League, NSM, and other Nationalist Front groups to help create two shield walls."⁹¹ He repeatedly grabbed TWP members, dragging them

⁸⁴ *Azzmador at #UniteTheRight, aka The Charlottesville Putsch pt 1*, YOUTUBE, Aug. 15, 2017, <https://www.youtube.com/watch?v=6KxNsGxlrQQ> (32:29 mark).

⁸⁵ See, e.g., *Charlottesville White Nationalist Protest: Fights & KKK RIOT (Unite the Right)*, YOUTUBE, Aug. 13, 2017, <https://www.youtube.com/watch?v=4bCV3IPKakE> (5:51 mark).

⁸⁶ *Charge #unitetheright #Charlottesville*, YOUTUBE, Aug. 16, 2017, <https://www.youtube.com/watch?v=eIf0Y5hM9rA> (:05 mark); Alex Rubinstein, TWITTER, Aug. 12, 2017, 12:18 PM, <https://twitter.com/RealAlexRubi/status/896405542305923074> (:06 mark).

⁸⁷ *Unite the Right Charlottesville – The Protestors (August 12, 2017)*, YOUTUBE, Aug. 17, 2017, <https://www.youtube.com/watch?v=U91XVeBRHAQ> (11:07, 11:44 marks).

⁸⁸ *Id.* (11:27 mark).

⁸⁹ *LIVE After Car Plows into Counter-Protestors at Alt Right Rally in Charlottesville*, YOUTUBE, Aug. 12, 2017, <https://www.youtube.com/watch?v=z7Bftlvh1qs> (18:40 mark).

⁹⁰ *ALT-RIGHT ENTRANCE*, *supra* note 74 (9:18 mark).

⁹¹ Parrott, *supra* note 8.

into his preferred formations.⁹² Even TWP's Director had to seek Hess's permission before removing his battle gear.⁹³

87. Not even clerics were immune from the Alt-Right Defendants' militaristic advances. At one point, clergy and faith leaders joined hands and sang on the southeast steps of Emancipation Park.⁹⁴ They intended to block access to the Park and expected to be arrested for their show of unity. Robert "Azzmador" Ray asserted that the clergy "will never stand in the way of us for one second. We will go through them like shit through a goose!"⁹⁵ Nearby, an alt-right leader screamed, "Fuckin' go through them—right there! Walk through them! Shield wall—go! Go!"⁹⁶

88. As commanded, the group "basically walked right through them."⁹⁷ An organized phalanx slammed into the clergy using shields, bats, and batons. The line broke, allowing the assailants through, only because "someone feared for their life."⁹⁸ This offensive "knocked a few folks over"⁹⁹ and wounded some of the clergy. The Alt-Right Defendants' demonstrated willingness to rely on violence greatly unnerved the religious leaders. Defendant Kessler, on the other hand, exalted the marchers' aggression: "Cornel West thought he could stop us. Nothing can stop us!"¹⁰⁰

⁹² *White Nationalist Protest*, *supra* note 85 (3:57 mark); *Alt-Right Attacks*, *supra* note 83 (4:42, 6:42 marks).

⁹³ Parrott, *supra* note 8.

⁹⁴ *Clergy #unitetheright #Charlottesville*, YOUTUBE, Aug. 16, 2017, <https://www.youtube.com/watch?v=nCt3Zu0RHTA>.

⁹⁵ *Azzmador, pt 1*, *supra* note 84 (7:45 mark).

⁹⁶ *Id.* (6:40 mark).

⁹⁷ *Id.* (22:06 mark).

⁹⁸ Abbey White, *A Charlottesville Faith Leader to Unite the Right: "Love Has Already Won Here"*, VOX, Aug. 14, 2017, <https://www.vox.com/identities/2017/8/14/16140506/congregate-cville-charlottesville-rally-protest-interview>.

⁹⁹ Dahlia Lithwick, *Yes, What About the "Alt-Left"?*, SLATE, Aug. 16, 2017, http://www.slate.com/articles/news_and_politics/politics/2017/08/what_the_alt_left_was_actually_doing_in_charlottesville.html (quoting one community faith leader).

¹⁰⁰ *Azzmador, pt 1*, *supra* note 84 (7:34 mark).

89. The Alt-Right Defendants also used their shield-wall technique to control entry and exit to Emancipation Park. Upon command, they broke the wall and stationed themselves into two parallel columns to create an “alley” that allowed movement. When the order came to “form up!” again, the shield wall reconstituted itself.¹⁰¹ James A. Fields, Jr., who would later punctuate the day with terror and tragedy by ramming his car into a crowd of counter-protestors, participated in this coordinated exercise with a Vanguard America shield.¹⁰²

90. Nearby, Defendant Mosley stood alert at the edge of the stairwell. When not giving media interviews, he attempted to control who could enter Emancipation Park.¹⁰³ To that end, he directed his followers on how to arrange themselves around the Park: “All right, give me some shield guys in front. Let’s go, shield guys in front!”¹⁰⁴ Mosley had remarked the night before that “I run this as a military operation. . . . I was in the army.”¹⁰⁵

91. The situation at Emancipation Park grew dangerously unstable. Some alt-right groups, including Defendant Vanguard America, formed a block-long shield wall.¹⁰⁶ Others, including Defendants League of the South and TWP, deployed their shields offensively—simply to ram into counter-protestors.¹⁰⁷ People sent bricks, chemicals, urine, smoke bombs, and frozen water bottles flying;¹⁰⁸ mace, pepper spray, and tear gas pervaded the air.¹⁰⁹ In the thick of the

¹⁰¹ See, e.g., *Behind the Scenes Footage of “Unite the Right” White Nationalist Rally in Charlottesville VA Part 13*, YOUTUBE, Aug. 18, 2017, <https://www.youtube.com/watch?v=1ZwnwminFyQ> (1:52, 2:03 marks).

¹⁰² *Id.* (5:07, 5:41, 6:36, 7:48 marks).

¹⁰³ *Id.* (3:18 mark).

¹⁰⁴ *Violence in Charlottesville*, *supra* note 3 (9:45 mark).

¹⁰⁵ Gravely et al., *supra* note 4.

¹⁰⁶ Christopher Mathias, TWITTER, Aug. 12, 2017, 10:49 AM, <https://twitter.com/letsgomathias/status/896383176695848961>.

¹⁰⁷ For a photo of several shield-carriers amassing for this purpose, see Joe Heim, TWITTER, Aug. 12, 2017, 11:11 AM, <https://twitter.com/JoeHeim/status/896388651848011776>.

¹⁰⁸ Christopher Mathias, TWITTER, Aug. 12, 2017, 11:31 AM, <https://twitter.com/letsgomathias/status/896393826897719296>.

¹⁰⁹ Christopher Mathias, TWITTER, Aug. 12, 2017, 11:33 AM, <https://twitter.com/letsgomathias/status/896394332407771137>.

chaos, armed alt-right groups received such orders as “More fucking shield wall!” and “Form a line!”¹¹⁰

92. The chaos that engulfed downtown Charlottesville left many attendees not only physically broken, but deeply traumatized. Witnesses have described feeling as if an invading army marched into their town, tarnished the community’s reputation, and left others to pick up the wreckage. Even Yingling’s and Curbelo’s men—who fully expected violence at the rally—were deeply shaken by the intensity of what they experienced. Yingling claims that his troops were insulted, shoved, maced, struck with frozen water bottles, pelted with paint, and sprayed with caustic chemicals.¹¹¹

93. Around 11:30 AM, soon after Governor Terry McAuliffe declared a local state of emergency, the Charlottesville Police Department deemed the gathering an unlawful assembly. Police used megaphones to convey the decision and informed attendees that if they did not leave Emancipation Park and the surrounding streets, they would be arrested. Law enforcement prepared to clear the Park by deploying a police line with riot shields.

94. The melee continued nonetheless. One videographer exclaimed that “it feels like a complete battleground right now!”¹¹² Another described it as “a fucking war zone out here.”¹¹³ Armed demonstrators attacked each other from opposite sides of police barricades, while unidentified militia members roamed Emancipation Park toting assault rifles.¹¹⁴ (Others had

¹¹⁰ *Behind the Scenes Footage of “Unite the Right” White Nationalist Rally in Charlottesville VA Part 14*, YOUTUBE, Aug. 18, 2017, <https://www.youtube.com/watch?v=Hmw3qZ029C8>.

¹¹¹ Yingling, *supra* note 33 (16:47 mark).

¹¹² Jake Westly Anderson, *INSANE NEW FOOTAGE FROM CHARLOTTESVILLE!!!*, YOUTUBE, Aug. 28, 2017, <https://www.youtube.com/watch?v=JEpDiM0M610> (12:46 mark).

¹¹³ *Unite the Right Charlottesville – Off the Beaten Path (August 12, 2017)*, YOUTUBE, Aug. 12, 2017, <https://www.youtube.com/watch?v=29VEPn3jNjA> (:54 mark).

¹¹⁴ *White Nationalist Protest*, *supra* note 85 (4:21 mark).

entered the Park throughout the morning.¹¹⁵) The fighting worsened after Defendant Heimbach “ordered his followers to push down the metal police barricades.”¹¹⁶

95. One alt-right protestor waved his flag and shouted, “Shoot! Fire the first shot in the race war, baby! Shoot!”¹¹⁷ Richard Preston, the Imperial Wizard of the Confederate White Knights of the Ku Klux Klan, threatened to “shoot that fucking nigger. . . . I’ll stand there and fuck that fucking nigger!”¹¹⁸ He brandished his pistol at the Market Street crowd and shouted, “Go ahead, motherfucker! I’ll shoot you!”¹¹⁹ One minute after declaring that “I’m gonna shoot one of these motherfuckers!,”¹²⁰ Preston actually fired at a counter-protestor in the direction of Emancipation Park.¹²¹

96. The Alt-Right Defendants again used shield walls to resist any effort to reclaim the territory. A man appearing to command multiple Nationalist Front groups screamed, “Shields up front! Shields up front! Shields!” Others interjected with “Attack!,” “Fuckin’ use ‘em!,” and “Give ‘em hell, boys!”¹²² One demonstrator warned that “We’re getting ready to charge you!”¹²³ Eli Mosley screamed for “every shield” to line up and form a barricade.¹²⁴ As one reporter on the ground observed, “It seemed that they had practiced for this.”¹²⁵

¹¹⁵ *Behind the Scenes Footage, Part 13*, *supra* note 101 (1:34 mark).

¹¹⁶ Robert King, *Meet the Man in the Middle of the “Unite the Right” Rally in Charlottesville, USA* TODAY, Aug. 12, 2017, <https://www.usatoday.com/story/news/nation-now/2017/08/12/meet-man-middle-unite-right-rally-charlottesville/562571001/>.

¹¹⁷ *Id.* (13:14 mark).

¹¹⁸ *Battle of Charlottesville: BLACKPILING? Nah. UNIFYING? Absolutely!*, YOUTUBE, Aug. 19, 2017, <https://www.youtube.com/watch?v=VLGGxApuBiw> (5:01 mark).

¹¹⁹ *Gun Pulled #unitetheright #Charlottesville*, YOUTUBE, Aug. 16, 2017, <https://www.youtube.com/watch?v=4fvmeiYroTU> (:02 mark).

¹²⁰ *Behind the Scenes Footage of “Unite the Right” White Nationalist Rally in Charlottesville VA Part 16*, YOUTUBE, Aug. 18, 2017, <https://www.youtube.com/watch?v=LnhfqzPYcYM> (7:26 mark).

¹²¹ *Id.* (8:35 mark); ACLU of Virginia, TWITTER, Aug. 26, 2017, 6:28 PM, <https://twitter.com/ACLUVA/status/901572207079555073>.

¹²² *Battle of Charlottesville*, *supra* note 118 (:13 mark); *see also id.* (4:50 mark) (“Shields to the front! Shields to the front!”); *id.* (6:58 mark) (“Shields over here! Shields!”).

¹²³ *Behind the Scenes Footage of “Unite the Right” White Nationalist Rally in Charlottesville VA Part 15*, YOUTUBE, Aug. 18, 2017, <https://www.youtube.com/watch?v=vPzDGMCP1o0> (:11 mark).

97. Some alt-right attendees forcefully pushed back against the police line in riot gear.¹²⁶ The police eventually cleared the area just before the rally's scheduled noon start time, forcing the free-for-all onto the surrounding streets. Members of Defendant Vanguard America and other organizations quickly formed an imposing shield wall in front of an adjacent business.¹²⁷ Defendant Tubbs led a procession of shield-carrying demonstrators down Market Street.¹²⁸

98. As the crowds began to disperse, six alt-right attendees—including a member of Vanguard America¹²⁹—converged on a black man named Deandre Harris in the Market Street parking garage. They beat him with poles and shields, leaving him with a concussion, a broken wrist, a chipped tooth, a busted lip, and deep head lacerations.¹³⁰

99. Defendant Kessler soon gave alt-right attendees their next command: “[W]e’re marching to McIntire! We’re marching to McIntire Park!”¹³¹ Defendant Mosley, too, announced that “we’re marching to McIntire—let everyone know!”¹³² En route, one marcher threw a flare at a *Washington Post* videographer.¹³³

¹²⁴ *Behind the Scenes, Part 16*, *supra* note 120 (7:15 mark).

¹²⁵ Blake Montgomery, *Here's What Really Happened in Charlottesville*, BUZZFEED NEWS, Aug. 14, 2017, <https://www.buzzfeed.com/blakemontgomery/heres-what-really-happened-in-charlottesville>.

¹²⁶ Christopher Mathias, TWITTER, Aug. 12, 2017, 11:51 AM, <https://twitter.com/letsgomathias/status/896398859043295236>.

¹²⁷ Joe Heim, TWITTER, Aug. 12, 2017, 11:33 PM, <https://twitter.com/JoeHeim/status/896395388093124608>.

¹²⁸ *Behind the Scenes, Part 16*, *supra* note 120 (19:20 mark).

¹²⁹ Sauk River Review, TWITTER, Sept. 11, 2017, 3:31 AM, <https://twitter.com/OldSaukRiver/status/907144530721308672>.

¹³⁰ *Behind the Scenes Footage of “Unite the Right” White Nationalist Rally in Charlottesville VA Part 17*, YOUTUBE, Aug. 18, 2017, <https://www.youtube.com/watch?v=MKxybrkKTqs> (:25 mark); Anthony Sabella, *Suffolk Native Says He Was Beaten During Charlottesville Violence*, WTKR, Aug. 13, 2017, <http://wtkr.com/2017/08/13/suffolk-native-says-he-was-beaten-during-charlottesville-rally/>.

¹³¹ *Violence in Charlottesville*, *supra* note 3 (14:29 mark).

¹³² *Azzmador at #UniteTheRight, aka The Charlottesville Putsch pt 2*, YOUTUBE, Aug. 15, 2017, <https://www.youtube.com/watch?v=zIIVu1HdaF4> (30:47 mark).

¹³³ Joe Heim, TWITTER, Aug. 12, 2017, 11:53 AM, <https://twitter.com/JoeHeim/status/896399188396822529>.

100. In a heated phone conversation, Mosley fumed to law-enforcement officials that additional vehicles were not being allowed near Emancipation Park to pick up alt-right attendees holding the group's remaining equipment. He warned that "I'm about to send at least 200 people with guns to go get them out if you guys do not get our people out."¹³⁴ He began searching for firepower: "I need shooters!"¹³⁵ Mosley vehemently rejected a suggestion that white-nationalist attendees leave McIntire Park to avoid arrest: "I'm the fucking organizer . . . Listen to what I say, goddamnit!"¹³⁶

101. Through the day, militia members carried assault rifles through the streets of Charlottesville. They took up post outside downtown businesses, including Plaintiff Alakazam Toys and Gifts.¹³⁷ Defendant Marion and a group of Three Percenters provided armed security for Defendant Mosley and other alt-right figures behind a closely guarded yellow line, while ordering everyone else to "back up!"¹³⁸ Two militia members pointed their assault rifles at someone who shouted, "get out of my town!"¹³⁹ And Richard Preston—the KKK leader who fired his pistol at a counter-protestor—had arrived not in Klan gear, but wearing a tactical vest as part of a local offshoot of the Three Percenters ("3% Risen").¹⁴⁰ According to Preston, "I had my AR-15 and a 9 mm. One of my guys had a .45 and another a 9 mm."¹⁴¹

¹³⁴ *Race and Terror*, *supra* note 1 (9:12 mark).

¹³⁵ Allie Conti, *Inside the Chaos and Hate at Charlottesville*, VICE, Aug. 13, 2017, https://www.vice.com/en_us/article/kzz8we/inside-the-chaos-and-hate-at-charlottesville.

¹³⁶ *Id.*

¹³⁷ *Militia*, YOUTUBE, Sept. 6, 2017, <https://www.youtube.com/watch?feature=youtu.be&v=Rnler3a1cvM>.

¹³⁸ *Three Percenters Militia in Charlottesville*, YOUTUBE, Aug. 17, 2017, <https://www.youtube.com/watch?v=WtPL8CpNf7I>.

¹³⁹ Samanta Baars et al., *United We Stand: Charlottesville Says No to Hate*, C'VILLE WEEKLY, Aug. 16, 2017, <http://www.c-ville.com/stand-charlottesville-say-no-hate/>.

¹⁴⁰ Nate Thayer, *Redneck Revolt: Armed Leftists Confront White Nationalists in Charlottesville*, Aug. 18, 2017, <http://www.nate-thayer.com/redneck-revolt-armed-leftists-confront-white-nationalists-in-charlottesville/>.

¹⁴¹ *Id.*

102. For half an hour, three militia members carrying semi-automatic rifles stood across from the Congregation Beth Israel synagogue. The synagogue's president "couldn't take [his] eyes off them," or the white-nationalist groups that repeatedly marched by in formation.¹⁴² Fearing an attack on their building, the forty congregants inside quietly slipped out of the back entrance. The Congregation removed all of its Torahs, including a Holocaust scroll, for safe keeping elsewhere; police advised the Congregation simply to cancel a worship service scheduled for later that evening.¹⁴³

103. After the rally ended, Defendant American Warrior Revolution marched in formation through the downtown streets for roughly twenty minutes.¹⁴⁴ One member remarked that "we put ourselves at a lot of risk being out here armed like this."¹⁴⁵ His premonition proved accurate: The rifle-toting regiment elicited intense hostility from local residents, both in a parking lot on Water Street¹⁴⁶ and near the Friendship Court residential area.¹⁴⁷ They were told to "get the fuck out of our city!"¹⁴⁸—"you're invading these people's homes!"¹⁴⁹ At least one militia member left his assault rifle unsecured in the bed of a pickup truck during this tense standoff.¹⁵⁰

¹⁴² Alan Zimmerman, *In Charlottesville, the Local Jewish Community Presses On*, REFORM JUDAISM, Aug. 14, 2017, <https://reformjudaism.org/blog/2017/08/14/charlottesville-local-jewish-community-presses>.

¹⁴³ *Id.*

¹⁴⁴ See American Warrior Revolution, *Charlottesville Live-Stream #2*, FACEBOOK, Aug. 12, 2017, <https://www.facebook.com/americanwarriorrevolution/videos/1428969810526013/> (24:01 mark); American Warrior Revolution, *Charlottesville Live-Stream #3*, FACEBOOK, Aug. 12, 2017, <https://www.facebook.com/americanwarriorrevolution/videos/1429012537188407>.

¹⁴⁵ American Warrior Revolution, *Live-Stream #3*, *supra* note 144 (11:00 mark).

¹⁴⁶ *Id.* (2:19 mark).

¹⁴⁷ Dean Seal, TWITTER, Aug. 12, 2017, 1:00 PM, <https://twitter.com/JDeanSeal/status/896416032386162688>.

¹⁴⁸ *Alt Right Rally*, *supra* note 89 (2:04:04 mark).

¹⁴⁹ *Id.* (2:03:43 mark).

¹⁵⁰ *Id.* (1:59:21 mark).

104. As organizers of the counter-protest received word of trouble at Friendship Court, just south of the downtown mall, they sent as many as 300 people toward the area. That group encountered the roving militiamen as they returned to the Water Street parking lot from Friendship Court.¹⁵¹ The counter-protestors eventually merged with another group of like-minded marchers moving north toward Justice Park via Water Street.

105. As the group headed up Fourth Street around 1:40 PM., a silver Dodge Challenger came barreling toward the captive crowd. The collision killed 32-year-old Heather Heyer and injured at least 19 others. It was a gruesome coda to a day full of violence and terror.

106. The attack was also a natural outgrowth of the Alt-Right Defendants' militaristic mindset. James A. Fields, Jr., who drove the car that killed Heather Heyer, in apparent imitation of an overseas terror tactic, attended Unite the Right within the ranks of Defendant Vanguard America. He wore the group's uniform and carried a black shield emblazoned with Vanguard's logo.

B. Private Militia Groups Made a Precarious Situation Worse

107. In emergency situations, it is critically important that the Commonwealth's duly constituted armed forces and peace officers be immediately recognizable. Private individuals need to know whose orders they must follow and to whom to report emergency information; state actors need to know that military personnel answer to them and will follow their commands to protect public safety. Private militia activity in Charlottesville obliterated this critical clarity for both private citizens and state officials alike.

108. To any reasonable observer, the Militia Defendants' attire and weaponry rendered them indistinguishable from state-sanctioned peacekeeping units. One episode in particular

¹⁵¹ Alex Rubinstein, TWITTER, Aug. 12, 2017, 1:27 PM, <https://twitter.com/RealAlexRubi/status/896422963423178752>.

illustrates the gravity of this problem. On the morning of August 12, 2017, Virginia’s Secretary of Public Safety and Homeland Security, Brian Moran, crossed paths with a militia group in the Market Street parking garage. Despite knowing that these particular soldiers could not be with the Virginia National Guard, their strikingly similar appearance caused him to “d[o] a double take.” “They’re not ours, are they?,” Moran asked his deputy, just to be sure. “No sir,” his deputy replied, “I don’t think they’re with us.”¹⁵²

109. According to Moran, state officials “were worried that Yingling . . . and his troops would be mistaken for National Guard members by the public.”¹⁵³ Virginia’s National Guard—deployed for the first time in decades to help quell the impending violence—was so concerned that attendees would conflate it with private militia groups that it tweeted out a way to distinguish between them: “@VaNationalGuard ready to assist local law enforcement in #Charlottesville, can be identified by MP patch #cvilleaug12.” A picture of the patch was appended to the message.¹⁵⁴

110. Numerous eyewitnesses reported mistaking the Militia Defendants for National Guard personnel. Overwhelmingly, their first instinct was that any unit so dressed and equipped *must* be an adjunct of state or local law enforcement. One attendee, for example, told her companion that “they’re security for Unite the Right”;¹⁵⁵ another mistook the militia for “civil defense.”¹⁵⁶ Few were willing to approach a row of armed men bearing assault rifles and inspect their uniforms to ascertain the militia’s public or private status. If they had done so on August

¹⁵² Aaron C. Davis et al., *How Charlottesville Lost Control Amid Deadly Protest*, WASH. POST, Aug. 29, 2017, https://www.washingtonpost.com/investigations/how-charlottesville-lost-control-amid-deadly-protest/2017/08/26/288ffd4a-88f7-11e7-a94f-3139abce39f5_story.html.

¹⁵³ Duggan, *supra* note 30.

¹⁵⁴ Va. National Guard, TWITTER, Aug. 12, 2017, 12:04 PM, <https://twitter.com/VaNationalGuard/status/896402001067683841>.

¹⁵⁵ Marion, *supra* note 43 (18:43 mark).

¹⁵⁶ Turner, *supra* note 45 (38:34 mark).

12, they would have seen patches bearing the emblems of the U.S. Army,¹⁵⁷ the Army's 82nd Airborne Division,¹⁵⁸ and the U.S. Marine Corps.¹⁵⁹ Defendant Marion described the militia's uniforms as "military-looking."¹⁶⁰

111. The presence of uniformed, rifle-wielding militiamen on the streets of a college town terrified rally attendees and local residents. One Charlottesville native wondered aloud, "Who would have thought that this would happen in America?"¹⁶¹ Another exclaimed that a nearby militia member "ha[d] a fucking loaded AR-15!"¹⁶² Two passersby threw their hands up in a plea not to be shot.¹⁶³ Even Defendant Curbelo acknowledged that "If I saw me coming at me in all my gear, I would find it intimidating."¹⁶⁴

112. Before the rally, Governor McAuliffe's Administration "engaged in extensive planning and preparation," including "the deployment of a large number of state troopers, as well as the Virginia National Guard for support."¹⁶⁵ The Commonwealth must be able to calibrate the proper response to public demonstrations without having to account for the often unpredictable and incompatible security measures of unaccountable, self-directed, heavily armed paramilitary groups. In Governor McAuliffe's words, "state and local officials" must be able "to make

¹⁵⁷ *Alt Right Rally*, *supra* note 89 (2:18:48 mark).

¹⁵⁸ *Id.* (1:59:21 mark).

¹⁵⁹ Brennan Gilmore, TWITTER, Aug. 12, 2017, 11:53 AM, <https://twitter.com/brennanmgilmore/status/896399305996742656>.

¹⁶⁰ Marion, *supra* note 35 (17:16 mark).

¹⁶¹ *Alt Right Rally*, *supra* note 89 (2:16:54 mark).

¹⁶² *Id.* (2:21:14 mark).

¹⁶³ American Freedom Keepers (Francis Marion), *Charlottesville Live-Stream #2*, FACEBOOK, Aug. 12, 2017, <https://www.facebook.com/AmericanFreedomKeepers/videos/1535537156505759/> (8:44 mark).

¹⁶⁴ Walters, *supra* note 28.

¹⁶⁵ *Governor McAuliffe Statement on Emergency Declaration in Response to Violence in Charlottesville*, Aug. 12, 2017, <https://governor.virginia.gov/newsroom/newsarticle?articleId=20924>.

thoughtful and informed decisions on managing the new reality of the potential for civil unrest.”¹⁶⁶

113. Private militia activity threatens to confound these meticulously crafted plans, just as it did in Charlottesville. The attendance of unauthorized militia groups at politically charged public events dramatically impairs officials’ ability to formulate an appropriate public-safety plan. As evidenced on August 12, 2017, law-enforcement officials invest significant amounts of time and energy in predicting which militia groups will attend and where they might station themselves. Given the nature of these groups, such predictions are unlikely to be accurate. Indeed, as reported by the *Washington Post*, the presence of militia groups on August 12 was an “unanticipated development[] . . . for state and local law enforcement leaders.”¹⁶⁷

114. The mere movement of militia members to and from their vehicles may also require a massive diversion of law-enforcement resources. The appearance of Defendant American Warrior Revolution in and around the Water Street parking lot was so controversial that the Virginia State Police moved in to secure the area with a full line of riot shields.¹⁶⁸ Militia member Rob Kapp commented that the police presence was “all for us, for our little group here. . . . This is the second time the police came to a spot we were at.”¹⁶⁹

115. During a demonstration, state and local officials must also consider whether to expel private militia members from the scene, risking an escalation of violence, or allow them to continue frightening the local population. According to Lieutenant Steve Upman, the

¹⁶⁶ Governor McAuliffe Signs Executive Order Temporarily Halting Demonstrations at Lee Monument in Richmond, Aug. 18, 2017, <https://governor.virginia.gov/newsroom/newsarticle?articleId=20966>.

¹⁶⁷ Davis, *supra* note 152.

¹⁶⁸ *Alt Right Rally*, *supra* note 89 (2:18:14 mark).

¹⁶⁹ Rob Kapp, *Charlottesville Live-Stream #3*, FACEBOOK, Aug. 12, 2017, <https://www.facebook.com/rob.kapp.1/videos/889524014519579> (1:45, 3:29 marks).

Charlottesville Police Department's Public Information Officer, "obviously we had to be cognizant of their presence" in determining how best to manage the unfolding chaos.¹⁷⁰

116. In any large-scale protest, moreover, law enforcement must strike a delicate balance between preserving community order and upholding constitutional rights. The need to ensure that law enforcement can overpower paramilitary personnel, should hostilities ever arise, greatly complicates that challenging task. As the president of the Major County Sheriffs of America told *Defense One* following August 12, 2017, "You don't want to have so many officers there . . . that it makes it look like you're trying to stifle someone's ability to protest." Still, "you need to be prepared in case you have some individuals that are going to start breaking the law."¹⁷¹

117. Governor McAuliffe noted the disparity between the militia presence and that of the Commonwealth's peace officers: "You saw the militia walking down the street," he said. "You would have thought they were an army. . . . [The militia members] had better equipment than our state police had."¹⁷² Private militia groups, but not the police or official military, carried assault rifles at the Unite the Right rally. According to Moran, "The militia showed up with long rifles, and we were concerned about that in the mix. . . . [I]t was a concern to have rifles of that kind in that environment."¹⁷³

118. All of these considerations distract officials from their standard peacekeeping duties. And if law enforcement errs at any step along the way—if it miscalculates what may well

¹⁷⁰ Caroline Houck, *Armed Militias Won't Stop After Charlottesville, and That Worries Law Enforcement*, DEFENSE ONE, Aug. 17, 2017, <http://www.defenseone.com/threats/2017/08/armed-militias-wont-stop-after-charlottesville-and-worries-law-enforcement/140335/>.

¹⁷¹ *Id.*

¹⁷² Casey Michel, *How Militias Became the Private Police for White Supremacists*, POLITICO, Aug. 17, 2017, <http://www.politico.com/magazine/story/2017/08/17/white-supremacists-militias-private-police-215498>.

¹⁷³ Duggan, *supra* note 30.

be incalculable—responsibility for any resulting tragedies will be laid at its doorstep, as the politically accountable defender of local communities.

119. Private militia groups’ flagrant disregard for state-law requirements exacerbates the danger of such catastrophes. Virginia has prescribed strict qualifications, training procedures, weaponry protocols, and codes of conduct for its armed forces and those who provide private security services within its borders. The Militia Defendants pay no heed to such regulations. These groups continue to accept applicants on whatever terms they wish, train members whenever and however they prefer, carry whatever weapons suit their sensibilities, and operate outside the reach of public accountability.

120. Rather than focusing on the mission at hand, at least three militia members—Rob Kapp, Jason Turner, and Defendant Francis Marion—broadcasted their experiences for Facebook Live audiences. Kapp frequently allowed the logistics of recording to preoccupy his attention. “I’m gonna try putting my thumb in my vest, see if [the camera] will stay upright,” he told his viewers.¹⁷⁴ Kapp acknowledged that “I need to be paying a little more attention to everything, but every time I put it down, something happens. I want everybody to see what’s going on out here!”¹⁷⁵ He also complained that “for some reason, it still won’t let me zoom in!”¹⁷⁶ Both Kapp and Turner engaged with online viewers’ real-time comments;¹⁷⁷ Defendant Marion zoomed in on individual attendees for lengthy periods, visibly annoying them.¹⁷⁸

¹⁷⁴ Rob Kapp, *Charlottesville Live-Stream #1*, FACEBOOK, Aug. 12, 2017, <https://www.facebook.com/rob.kapp.1/videos/889426417862672/> (:05 mark).

¹⁷⁵ Kapp, *supra* note 75 (3:46 mark).

¹⁷⁶ Kapp, *supra* note 174 (2:35 mark).

¹⁷⁷ *Id.* (5:47 mark); Jason Turner, *Charlottesville Live-Stream #1*, FACEBOOK, Aug. 12, 2017, <https://www.facebook.com/jason.turner.5602/videos/1484778834901437/> (9:54 mark); Turner, *supra* note 45 (10:39, 26:52, 32:14 marks).

¹⁷⁸ Marion, *supra* note 43 (16:37 mark).

121. Observers described the Militia Defendants as tense and restive as the surrounding violence tried their patience. As he witnessed a particularly violent clash initiated by a white-nationalist group, one militia member was heard to say, “OK, here we go,” while moving for his weapon. For Defendant Yingling, the scene was “nothing short of horrifying”;¹⁷⁹ he claims to be “having nightmares about it.”¹⁸⁰ Defendant Curbelo recalled it as “four and a half, five hours of absolute hell.”¹⁸¹ He divulged to a reporter that “I can’t tell you how difficult it was to maintain our discipline with that measure of hate.”¹⁸²

122. Defendant Marion explained that “because of all the firearms involved,” the potential for violence was “extremely, extremely higher than any other event or rally any of us have ever been at.”¹⁸³ Defendant Curbelo also appreciated how hazardous the gathering had become, his men being “fully armed with long guns, with sidearms, batons, knives.”¹⁸⁴

123. The massacre so many feared very nearly materialized. After the rally, Defendant Curbelo acknowledged that additional shots would likely have been fired had the militia been unable to “maintain[] its discipline.”¹⁸⁵ In a chilling assessment, Curbelo stated, “Did [my men] deploy any of th[eir] weapons? No. Did they have the right to, considering that there was a mob attacking them? Yes!”¹⁸⁶ In fact, a militia member named “T.K.” drew his weapon and “came very close to firing on the crowd”¹⁸⁷ after exclaiming, “Get the fuck back!”¹⁸⁸ Curbelo insisted

¹⁷⁹ Duggan, *supra* note 30.

¹⁸⁰ Routh, *supra* note 47.

¹⁸¹ Curbelo, *supra* note 14 (31:37 mark).

¹⁸² Wallace, *supra* note 15.

¹⁸³ Marion, *supra* note 35 (58:07 mark).

¹⁸⁴ Curbelo, *supra* note 14 (38:02 mark).

¹⁸⁵ *Id.* (19:10 mark).

¹⁸⁶ *Id.* (38:11 mark).

¹⁸⁷ Houck, *supra* note 170.

¹⁸⁸ Curbelo, *supra* note 14 (38:50 mark).

that “[T.K.] had the right to . . . shoot them.”¹⁸⁹ Just minutes after leaving the rally scene, Defendant Marion breathed a sigh of relief: “Whew, that was a little bit close!”¹⁹⁰

C. Plaintiffs Suffered, and Will Continue to Suffer, Irreparable and Incalculable Injuries as a Result of Defendants’ Unlawful Conduct

124. The City of Charlottesville has expended hundreds of thousands of dollars in preparing for and responding to the Unite the Right rally, and the City anticipates that its costs will continue to mount. These costs include overtime pay for city employees, support from surrounding localities, and legal costs both before and after the rally. The presence of paramilitary activity and militia groups increased these costs by heightening the risks of violence, thereby necessitating additional police and security resources.

125. Should Defendants return to Charlottesville to engage in paramilitary activity, the City would be required to devote further time and effort to addressing the threat to public safety posed by such activity. The City has already set up an internal task force to develop proactive strategies regarding policing, regulations, communications, intelligence-gathering, and community outreach for future similar events in Charlottesville, thereby diverting multiple City departments’ limited resources. The City would likely have to continue or expand such efforts should Defendants return to Charlottesville to engage in paramilitary activity.

126. The City of Charlottesville has also felt compelled, in part by the presence of paramilitary groups, to revise its rules and procedures for controlling the conditions under which groups and organizations may hold rallies and demonstrations in Charlottesville.

127. Prior to the Unite the Right rally, plaintiff businesses spent significant amounts of time and resources to understand and prepare for the risk of violence. For example, some plaintiff businesses felt compelled to invest in measures to secure their property from harm,

¹⁸⁹ *Id.* (38:57 mark).

¹⁹⁰ Marion, *supra* note 163 (7:04 mark).

including hiring additional staff and private security, boarding up their store windows, and installing blackout curtains.

128. Plaintiff restaurants and retail stores closed early on August 12, 2017—or never opened—out of fear for the safety of their owners, employees, and property. These plaintiffs each lost thousands of dollars in revenue by closing on a Saturday in the summer. Some plaintiffs remained closed on Sunday, August 13, 2017, or closed early on that day, leading to additional revenue losses.

129. Employees of many plaintiff businesses did not come to work on August 12 and 13, 2017, out of fear for their safety.

130. On the morning of August 12, 2017, two members of a militia group stationed themselves in front of Alakazam Toys and Gifts, interfering with its business. Alakazam locked the doors to its store with patrons still inside in order to protect the patrons from physical harm.

131. Although the owners of Hays + Ewing and Wolf Ackerman often work on weekends, they were unable to reach their offices on August 12, 2017, because they felt it was unsafe to travel downtown.

132. Quality Pie shut down construction work for four days following the Unite the Right rally out of fear of violence, thereby delaying its opening to customers.

133. Since August 12, 2017, plaintiff businesses have experienced a marked decline in revenues. Would-be clients and customers have begun to avoid Charlottesville, and the downtown area in particular, because they fear the return of private militias and alt-right paramilitary groups. The public has also come to associate Charlottesville with paramilitary activity, harming plaintiffs' business prospects and property values in Charlottesville. Should

paramilitary forces return to Charlottesville, this perception would intensify, making it more difficult for the City and its businesses to overcome.

134. Multiple plaintiff businesses have invested new efforts and resources into marketing to try to make up for the loss of business and reputational harms they have experienced. For example, as Champion Brewing has sought to expand the distribution of its packaged products, which display Champion's association with Charlottesville, it has had to overcome the negative connotation now associated with the City.

135. Additionally, a potentially significant investor who was scheduled to visit Champion Brewing postponed the meeting indefinitely after August 12, 2017, and has not yet rescheduled the visit. Champion Brewing has sought other investors, but has not found an equivalent replacement.

136. Confidence in Charlottesville as a quality place to live and work has been eroded by the events surrounding the Unite the Right rally and the association between Charlottesville and paramilitary activity. Unless redressed, this perception will reduce the number of new housing and business projects in the Charlottesville area, causing harm to both Hays + Ewing and Wolf Ackerman. Since August 12, 2017, these plaintiffs have received notably fewer inquiries for new building projects than anticipated based on past experience. Each architectural project is unique and takes several years to complete, making the amount of loss impossible to quantify.

137. Because the City of Charlottesville has redirected many of its agencies to focus on responding to the events of August 12, 2017, and to preparing for similar future events, City agencies have been unable to maintain their usual flow of day-to-day business. This has caused

significant delays in Wolf Ackerman's existing projects and has required the firm to devote additional resources toward, among other things, seeking needed approvals from the City.

138. Members of the Belmont-Carlton, Little High, and Woolen Mills neighborhood associations felt unsafe in their homes and in their communities on August 11 and 12, 2017, leaving them unable to enjoy the many benefits that Charlottesville has to offer. Residents were frightened by the presence of militia groups and confused about their status as public or private soldiers. Because they feared for their children's safety, residents either kept their children indoors or sent them out of town to stay with friends and family members. Neighborhood events planned for the weekend of August 12 were cancelled, as well.

139. On August 12, 2017, Defendants trespassed on the property of plaintiff neighborhood associations' members in traveling to and from the rally. If Defendants were to return to downtown Charlottesville—where parking is scarce—to engage in paramilitary activity, these harms would likely occur again.

140. Plaintiff businesses' owners and employees, as well as plaintiff neighborhood associations' members, continue to suffer from anxiety and stress because they fear that paramilitary organizations will return to Charlottesville. Many residents feel anxious about attending large public gatherings or encountering large groups in downtown Charlottesville, and parents continue to avoid bringing their children to Emancipation Park and the public library, located across the street from the park. Further militia activity in Charlottesville would exacerbate these fears and augment residents' perception of their vulnerability.

D. The Organizers of Unite the Right Established a Private Online Discussion Group to Coordinate a Massive Show of Force

141. The Unite the Right rally of August 12, 2017—and the unlawful paramilitary activity that undergirded it—were the product of systematic, centralized preparation. It has since

come to light that rally organizers Jason Kessler and Eli Mosley oversaw a highly regimented event-planning process using an online chat app called Discord. They orchestrated a weeks-long virtual convocation of alt-right organizations, one designed to streamline the logistics of attending the event and engaging in a militaristic show of force under the guise of self-defense. Over 400 unique users from all parts of the country¹⁹¹ transmitted and received information about Unite the Right over Discord.

142. Using a series of dedicated channels within an invitation-only chatroom labeled “Charlottesville 2.0,” Defendants Kessler and Mosley and their agents funneled specific operational instructions to attendees. Rank-and-file participants also used those outlets to seek clarification and apprise one another of the latest relevant intelligence. The Charlottesville 2.0 channels included such topics as #announcements, #confirmed_participants, #shuttle_service_information, #code_of_conduct, #questions_for_coordinators, #flags_banners_signs, #promotion_and_cyberstrike, #gear_and_attire, #antifa_watch, #demonstration_tactics, #chants, #safety_planning, #virginia_laws, #lodging, and #carpool_wanted.

143. One of the Discord group’s moderators “set up private, organization specific channels so members in each group c[ould] coordinate and socialize with each other.” The listed groups included Defendants Traditionalist Worker Party, Vanguard America, and League of the South. The same convenience was also provided for individual geographic regions, including ones as far-ranging as #florida, #tx_ok, #california_pacific_nw, #midwest_region, #ny_nj, and #beltway_bigots.

¹⁹¹ Of the relatively few Discord users who included their states of residence in their usernames, 29 states and the District of Columbia were represented.

144. Several prominent alt-right figures participated in the event planning through Discord. Of those whose identities can readily be discerned, the contributors included Christopher Cantwell, Defendant Matthew Heimbach, Augustus Invictus, Matthew Parrott, Robert “Azzmador” Ray, and Richard Spencer, in addition to Defendants Kessler and Mosley.

145. Kessler and Mosley delegated certain event-planning tasks to other alt-right leaders. User “Tyrone,” for example, oversaw the shuttle system on August 12, claiming to convey “the official policy from the organizing committee”; user “Erika” coordinated “the medical end of things,” which included enlisting the services of unlicensed EMTs. Individual Discord users were also identified as regional and state-specific organizers for the rally. Even so, only a fraction of the preparations occurred in online chatrooms. As one user explained, “I’m sure there is a lot of planning going on behind the scenes that we don’t see.”

146. On July 7, 2017, user “Heinz - MI” posted a Word document entitled “Shields_and_Shield_Tactics_Primer.docx” to the #safety_planning channel.¹⁹² He wrote that “this is what we have been sending to group leaders in order to get them on the same page.” The document illustrated how to execute a shield wall, which would have both “defensive” and “offensive” components. It envisioned the creation of an impregnable barrier that would use “long[] weapons” to “push people away from the wall as [our] group advances.” Inter-group coordination—using shields “in an organized manner”—would be the key to “present[ing] a squared away force” against “our enemies.” The document concluded by inviting all shield-wielding groups to train collectively upon arriving in Virginia: “By the time we get to Charlottesville we will hopefully have enough time to practice as a solid group.” “Heinz - MI”

¹⁹² See *Shields and Shield Tactics Primer*, July 7, 2017, available at https://www.unicornriot.ninja/wp-content/uploads/2017/09/Shields_and_Shield_Tactics_Primer.pdf.

also promised to “put[] out a video for basic formation, roles, and commands to all of the group leaders shortly.”

147. One user of Gab, another social-networking site, similarly advised Unite the Right attendees to “[l]earn to move in formation” and follow an “organized hierarchy,” including a chain of command.

148. On August 10, 2017, Defendant Mosley circulated a nine-page PDF entitled “General Orders” in the Charlottesville 2.0 Discord chatroom.¹⁹³ This document contained a comprehensive set of directives to help attendees finalize their preparations and work in lockstep at the event. Its readers were exhorted to “follow the rules and stick to the plan.” That entailed “pay[ing] attention to your leadership, and the announcements channel in [D]iscord,” as well as following six specific Twitter accounts for minute-by-minute updates. The General Orders also advised participants to “get in touch with the organizers (Eli Mosley or Jason Kessler) ASAP” in the event of an emergency.

149. Defendant Mosley emphasized that law enforcement could not be relied on to keep the peace, and that alt-right paramilitary units must do so instead. To that end, the “General Orders” document he drafted and circulated via Discord described three contingency plans: Plan Green, Plan Yellow, and Plan Red. Under Plan Yellow, “we . . . [would] have to take the ground by force.” And Mosley described Plan Red as being “incredibly dangerous.” To implement these plans, the organizers urged all attendees to bring shields and helmets. Mosley declared that “[o]ur security forces in [the] form of the shield wall will be deployed in whatever manner is most effective to reduce the threat.” He continued: “Our protection overall will be from our numbers”—those combining to form a shield wall—“and the people who are experienced/trained

¹⁹³ See *Operation Unite the Right Charlottesville 2.0: General Orders*, Aug. 10, 2017, available at https://www.unicornriot.ninja/wp-content/uploads/2017/08/OpOrd3_General.pdf.

with a firearm.” The Orders accordingly encouraged attendees to “bring a weapon” if they felt comfortable doing so. Posting on Discord, one co-organizer revealed the extent of coordination: “We’ve consistently been in contact with the security organizers of every individual group that’s attending for months.”

150. In the weeks before the rally, Defendants Kessler and Mosley organized several conference calls attended by at least one representative from each attending group. Those calls, which took place in the “Leadership Meeting” voice channel on Discord, aimed to consolidate various groups’ efforts and present a united tactical front. The last such call occurred on August 10, 2017, and lasted over an hour.¹⁹⁴

151. Defendants Kessler and Mosley frequently interceded in the Discord group to provide definitive instructions or answer specific queries. For example, Kessler recommended that attendees “bring picket sign posts, shields and other self-defense implements” that could be turned into “weapon[s] should things turn ugly.” Mosley periodically alerted participants to impending leadership meetings and the status of forthcoming operational orders. He told the entire Discord group that “[s]ince I am doing this full time . . . please feel free to reach out to me directly for important things.” Kessler has also said that “for two months . . . it was my full-time job essentially.”¹⁹⁵

152. Unite the Right attendees often introduced themselves by referencing their Discord usernames. As one demonstrator remarked, “I’m meeting tons of people from the

¹⁹⁴ See *Discord Voice Chat Meeting Recording (Part One)*, Aug. 10, 2017, available at <https://www.unicornriot.ninja/wp-content/uploads/2017/09/UniteTheRight-August10-leakedchat-1.mp3>; *Discord Voice Chat Meeting Recording (Part Two)*, Aug. 10, 2017, available at <https://www.unicornriot.ninja/wp-content/uploads/2017/09/UniteTheRight-August10-LeakedChat2.mp3>.

¹⁹⁵ Jason Kessler, *The Elliot Kline (Eli Mosley) Problem and Unite the Right*, PERISCOPE, Sept. 17, 2017, <https://www.pscptv.w/1dJxXLpVeRNxZ> (4:50 mark).

Discord. It's great!"¹⁹⁶ A typical exchange unfolded as follows: "Oh, you're 'TheBigKK'?" "Yeah, I hosted Discord. Nice to meet you!"¹⁹⁷

E. The Alt-Right's Extensive Planning for Militaristic Violence at the Unite the Right Rally

153. The organized violence that erupted in Charlottesville was hardly unintended. Those who planned the Unite the Right rally, as well as the rank-and-file attendees who received instruction and helped publicize the event, eagerly plunged into a maelstrom of their own making. And the event's self-appointed peacekeepers stood guard with military-style weapons precisely because they deemed their presence necessary to forestall violent confrontations.

154. On August 11, 2017, Tim Gionet (also known as "Baked Alaska"), one of the rally's featured guests, tweeted a picture of a battle scene with prominent alt-right figures' faces superimposed on those of rifle-wielding soldiers. The picture was captioned, "Tomorrow #UniteTheRight."

155. On August 11, 2017, Augustus Invictus—another prominent alt-right personality featured on posters publicizing the rally—shared the same image on his Facebook account. He chose the following caption: "The Battle of Charlottesville. Tomorrow at 10."¹⁹⁸

156. Christopher Cantwell, an alt-right leader whose name appeared on Unite the Right promotional materials, claimed that "[t]hese people"—i.e., his ideological opponents—"want violence, and the right is just meeting market demand."¹⁹⁹ He informed his readers on August 8, 2017, that he "planned on being armed . . . to deal with the very real threat of violent communist

¹⁹⁶ *Behind the Scenes, Part 17*, *supra* note 130 (5:50 mark).

¹⁹⁷ *Behind the Scenes Footage of "Unite the Right" White Nationalist Rally in Charlottesville VA Part 10*, YOUTUBE, Aug. 18, 2017, <https://www.youtube.com/watch?v=Mc7CdHy2rzA> (1:18 mark).

¹⁹⁸ Augustus Invictus, FACEBOOK, Aug. 10, 2017, <https://www.facebook.com/augustus.invictus.3/posts/490733967926370>.

¹⁹⁹ *Race and Terror*, *supra* note 1 (21:31 mark).

agitators.”²⁰⁰ Sure enough, he came equipped to do battle: “You lose track of your fuckin’ guns, huh,”²⁰¹ Cantwell remarked while displaying his weaponry in an interview on August 12, 2017. “I came pretty well prepared for this thing today. . . . We knew that we were gonna meet a lot of resistance. The fact that nobody on our side died, I’d go ahead and call that points for us.”²⁰²

157. Matthew Parrott, Director of Defendant TWP, wrote in a blog post that “[w]e were prepared to fight” in Charlottesville.²⁰³ That was certainly true of the Unite the Right attendee who wore a helmet with “Commi Killer” inscribed on the front.²⁰⁴

158. As a PBS News Hour interviewer observed to Defendant Heimbach, “You must have known that if you did a rally in a city like this, that something like this might happen. You must have had some knowledge of that—that people would show up to say, ‘We don’t want you in our city,’ and violence would ensue.”²⁰⁵ Heimbach had foreseen that very possibility; in fact, he explained to a Facebook commenter that permitting women to attend the rally as medics and photographers would “free[] up our fighting men.”²⁰⁶

159. The *Daily Stormer*, a popular white-supremacist website, “spent months openly planning for war” in Charlottesville. It encouraged its readers to “bring shields, pepper spray, and fascist flags and flagpoles.”²⁰⁷ A post at the website stated that certain alt-right groups “are

²⁰⁰ Christopher Cantwell, *Unite the Right Updates*, RADICAL AGENDA, Aug. 8, 2017, <https://christophercantwell.com/2017/08/08/unite-right-updates/>.

²⁰¹ *Race and Terror*, *supra* note 1 (19:37 mark).

²⁰² *Id.* (19:10, 19:41 marks).

²⁰³ Matt Parrott, *Fighting It Only Makes It Worse: A Defense of “White Dinduism”*, TRADWORKER, Aug. 22, 2017, <https://www.tradworker.org/2017/08/fighting-it-only-makes-it-worse/>.

²⁰⁴ *Behind the Scenes, Part 17*, *supra* note 130 (5:19 mark).

²⁰⁵ *How White Nationalist Leader Matt Heimbach Defends Violence at Saturday’s Rally in Charlottesville*, YOUTUBE, Aug. 15, 2017, <https://www.youtube.com/watch?v=lt7tHZcLbbU> (4:31 mark).

²⁰⁶ Matthew Heimbach, FACEBOOK, Aug. 10, 2017, *available at* <https://itsgoingdown.org/wp-content/uploads/2017/08/11aazz-2.png>.

²⁰⁷ A.C. Thompson et al., *Police Stood By as Mayhem Mounted in Charlottesville*, MOTHER JONES, Aug. 13, 2017, <http://www.motherjones.com/politics/2017/08/police-stood-by-as-mayhem-mounted-in-charlottesville/>.

pretty prone to starting shit,” and would likely “bash antifas['] heads in” on August 12. The post also admonished readers to “TAKE A BATTLE BUDDY” and “BE READY FOR A FIGHT.”²⁰⁸ One *Daily Stormer* commenter—“Exterminajudios”—insisted that “[w]e need military guys there to crack skulls.”²⁰⁹

160. On the day of the rally, a *Daily Stormer* author explained that “the true reason” for the gathering “is that we’re making a show of force.”²¹⁰ He continued: “There’s those . . . who say that we’re war-mongerers and we’re evil, and we want to destroy our enemies. Well, we do want to destroy them.”²¹¹

161. In communicating with one another in advance of the rally, many attendees welcomed the prospect of violence. On the *Stormfront* message board, one user wrote, “Going. Bringing a shield baseball helmet and goggles. I also got some mean fists.”²¹²

162. A Facebook user named Aaron Dale strategized about how to perpetrate mass slaughter at alt-right rallies through premeditated “self-defense”: “You have the opportunity to advertise a time and place; you show up with guns and let these degenerates come try to kill you. You literally have the chance to take out our enemies. Not just metaphorically or through rhetoric, but through legal acts of self defense.”²¹³

163. The organizers of Unite the Right used Discord to arrange for a team of alt-right-affiliated emergency medical providers, precisely because they knew the gathering would likely turn violent.

²⁰⁸ *Solidarity Cville Documents Threats of Violence Planned for August 12*, SOLIDARITY CVILLE, July 17, 2017, <http://solidaritycville.com/2017/07/17/Solidarity-Cville-documents-threats-of-violence-planned-for-August-12/#more>.

²⁰⁹ *Id.*

²¹⁰ *Azzmador*, pt 1, *supra* note 84 (29:10 mark).

²¹¹ *Id.* (30:22 mark).

²¹² “Unite the Right 8/12/2017,” *Events*, STORMFRONT, June 30, 2017, <https://web.archive.org/web/20170816114836/https://www.stormfront.org/forum/t1215665>.

²¹³ *Threats of Violence*, *supra* note 208.

164. Legions of “Charlottesville 2.0” Discord chatroom users openly craved violence against their ideological opponents, as the following messages graphically reveal:

- Kessler advocated weaponizing shields should things “turn ugly.” He also insisted that “[w]e . . . don’t want to scare [Antifa] from laying hands on us”;
- “8OD”: “we can stick [our shields] together and become one undefeatable well protected battle unit”;
- “Aaron - VA” encouraged users to “[l]ift weights . . . and defeat degeneracy.” He wrote that “I am expecting violence,” and warned that if the Charlottesville police didn’t arrest Antifa members, “I become the Charlottesville PD”;
- “Americana - MD” described Unite the Right as “an event where there will be known hostilities.” He also wrote the following: “Be better at violence th[a]n they are”; “Attack on all fronts”; “If you want peace, prepare for war”; “get jacked so you can look good when you stab commies with a knife”;
- “Azzmador,” regarding the possibility of an “all out brawl,” wrote, “good, bring it on”;
- “AltCelt(IL),” after posting a picture of a truck plowing through a large crowd: “This will be us”;
- “Baeravon” predicted that the rally would be a “pit of vipers.” He asked fellow users “what can we get away with, without receiving assault charges?”;
- “Chris Liguria”: “I plan on bringing riot spray . . . in case shit really hits the fan”; “If you use PVC [for flagpoles] get schedule 80 for thicker thumping”; “construction helmet, sunglasses/goggle, pepper spray and a shield seem to now be the bare minimum”; “Whip them into passivity like their parent[s] should have”;
- “Codaius - PA”: “I would love to headbutt the fuck out of some antifa”;
- “Colton Merwin - MD”: “I’d suggest not bringing anything that you don’t want to get broken”;
- “Dr_Ferguson” detailed what he would do “if/when violence erupts”;
- “Erika” uploaded an image of a poster that read, “This is an attack on your racial existence. FIGHT BACK OR DIE”;
- “Goldstein Riots”: “carving war swa[s]tika into chest to prepare for battle”;
- “greg-ky” was “concerned about getting my teeth knocked out to be honest. . . . Should be one hell of a show”;

- “Heimdulf - VA” uploaded an image of a poster with the text, “The Battle for Charlottesville.” He also spoke cheerfully of “drop[ping] that faggot with a swift combo”;
- “Heinz - MI” urged everyone to “prepare for violence” and described Unite the Right as “a protest/rally where we expect violence.” He also “suggest[ed] learning how to actually fight in a shield wall”;
- “I’m Not Sam Hyde”: “Pee in balloons and throw them at communists”;
- “IdentityIndiana” asked, “What would y’all recommend for melee?” (Tiwaz responded, “Your fists and your brains”);
- “JCAAdams”: “everyone and their mother will need helmets for this”;
- “John Cholisniky - TX” posted a picture of a man pointing two guns at the camera, rifle strapped over his chest, with the comment: “If you don’t look like this in Cville, you’re a cuck”;
- “Kampfhund VA”: “Violence of action is extremely important!”;
- “kristall.night” warned that “cheaper [flagpoles] won’t be very useful to double as spears,” and told others how “to use [a flagpole] as a club”;
- “Kurt - VA”—a moderator—wrote that “[i]mpaling people is always the best option,” and urged other users to “put your own spike on the top of [a flagpole].” He also alluded to “the wars to come” and asserted that “you only need 2 bullets” for each person to be killed;
- “Kurt14Lipper”: “We must secure the extinction of Antifa”;
- “Lawrence - TX”: “Everyone should have a battle buddy”;
- “Mack Albion”: “[F]eel free to urinate and defecate on your nearest antifa wannabe terrorist faggot pussy”; “I’m ready to crack skulls”; “I [may] have to smash an antifa in the face”;
- “Marie”: “Anyone want to stomp some boomers?”;
- “McCarthy” described himself as a “FUTURE SOLDIER.” He also acknowledged that attendees could “be[] beaten and killed”;
- “Melektaus”: “Solve this racewar once and for all”;
- “Munich”: “its going to be a pleasure fighting for the white race alongside all of you”;

- “NIMP”: “[I] would love to ‘have fun’ with some Antifa”;
- “Nicklis - OH” posted an “inspirational” quote urging attendees to “do battle,” “fight to the death,” and withstand “Olympian AGONIES.” He also called for his enemies to be “[t]hrow[n] . . . in a woodchipper and set . . . on fire”;
- “PureDureSure” mused about whether to “fashion a shield small/light enough to prove an effective striking tool.” He advocated “us[ing] their ammunition against them and return[ing] fire with several times the force,” and also remarked that “[i]f they intend to throw [bottles of concrete] we should have a means to ‘return to sender’ with even more force”;
- “Requiem” posted pictures of (1) the words “YOU DIE” written underneath an X’ed-out Star of David, and (2) a hand carrying a knife, captioned, “Fight Until the Last Drop”;
- “roybooneNC” posted an image with the caption, “Beat all Jews”;
- “StrawberryArmada” posted an image of an execution via firing squad;
- “Tiwaz”: “We should throw bars of soap at antifa”;
- “Tyrone” affirmed that being able to run over protestors “[s]ure would be nice,” and posted a picture captioned, “Introducing John Deere’s New Multi-Lane Protester Digestor.” He even asked the forum, “Is it legal to run over protestors blocking roadways? I’m NOT just shitposting. I would like clarification.” He urged others to “have a plan to kill everybody you meet.” He advised that, with respect to flag size, “[a]nything longer is too long to effectively bludgeon someone with”; commenting on flagpole design, he cautioned that “you only are going to get 3-6 whacks to something solid before it breaks”—“You want something designed for longitudinal stress.” “Tyrone” also stated the following: “The best defense is a good offense”; “I’m bringing Mosin-Nagants with bayonets attached”—“It will shoot clean through a crowd at least four deep”; “First I have to kill me a Communist”; “What if we are sociopathic and want [Antifa] to show up, for . . . self defense purposes?”; and “Just carry a pocket full of rocks. They can be in a sock or something”;
- “von Diez - NC”: “a real man knows how to make a shield a deadly weapon”;
- “WhiteTrash”: “my boys bringing AKs”—“ar15s are for pussies anyways.”

165. In promoting the Unite the Right rally, Defendant Kessler publicly disclaimed the possibility of violence, stating that “we are going to be here to peaceably assemble”²¹⁴ and

²¹⁴ Jason Kessler, *Unite the Right Press Conference*, YOUTUBE, July 13, 2017, <https://www.youtube.com/watch?v=61e372tGFBY> (1:44 mark).

exchange ideas “in a nonviolent way.”²¹⁵ Yet despite his paeans to pacifism, Kessler knew that many Unite the Right attendees were engaged in paramilitary training and clamoring for a fight (or far worse). In a leadership-wide conference call on August 10, for example, one of the organizers envisioned “attack[s] by right wing death squads.”²¹⁶

166. Kessler was hardly the only attendee who employed civil-libertarian platitudes to whitewash ulterior motives. In the aftermath of August 12, 2017, C.J. Ross—a member of the Virginia Three Percenters—explained to a news organization why he and his group had attended the rally. In short, “We wanted to support the Constitution and help keep things peaceful.” Ross claims to have been blindsided by the bigotry: “We realized this wasn’t what we were all about when we heard [white nationalists] start chanting slurs.” But even “Nazis . . . have the right to speak.”²¹⁷

167. In the weeks before August 12, 2017, however, Ross had openly celebrated and indeed stoked the forthcoming violence. In a message sent to another Facebook user, he asserted that the rally’s purpose was “to crush and demoralize Antifa to the point where they don’t return to the park.”²¹⁸ In a public post “liked” by Jason Kessler, Ross wrote, “Just say when go time is and we’ll walk in there with a thousand men and crush these little cunt rags for good.”²¹⁹ In a message to the “Mountaineers Against Antifa” Facebook group, Ross wrote, “I can assure you there will be beatings at the August event. . . . That day we finish them all off.”²²⁰ He also

²¹⁵ *Id.* (:11 mark).

²¹⁶ *Meeting Recording (Part Two)*, *supra* note 194 (4:47 mark).

²¹⁷ Bryan McKenzie, *Militia Member Speaks About Group’s Role at Rally*, THE DAILY PROGRESS, Aug. 20, 2017, http://www.dailyprogress.com/news/local/militia-member-speaks-about-group-s-role-at-rally/article_e6765d00-85f9-11e7-82cf-3baf6f9c497a.html.

²¹⁸ *Threats of Violence*, *supra* note 208.

²¹⁹ *Id.*

²²⁰ *Id.*

reported that “[w]e will be facing off directly with Antifa, and Black Lives Matter. All able bodied men and women ready to fight!”²²¹

168. The Militia Defendants understood the risks, as well. On July 31, 2017, Defendant Yingling uploaded a video to Facebook Live explaining why he would attend the Unite the Right rally. After predicting that the protestors and counter-protestors would “just tear each other to pieces”²²² on August 12, Yingling asserted that “a rally like this really poses a true threat of violence.”²²³ In his view, the upcoming rally was “a veritable powder keg.”²²⁴ Yingling later told his local newspaper that his militia selects events “based on the level of the threat of violence.”²²⁵

169. On August 8, 2017, the Pennsylvania Light Foot Militia Laurel Highlands Ghost Company posted the following message to its Facebook page: “Gearing up for Charlottesville... this one is NOT going to be for the faint of heart.”²²⁶

170. On August 11, 2017, Defendant Yingling posted the following message to his Facebook page: “[O]n the road to Charlotte[s]ville.. If anyone could possibly throw up a prayer for me (and all the militia going) [i]t would be GREATLY appreciated... Something tells me, we’re going to need it.”²²⁷ Yingling later stated that the commander of the Virginia Minutemen Militia solicited his assistance, given “the volatility of the event.”²²⁸

²²¹ *Id.*

²²² Christian Yingling, FACEBOOK, July 26, 2017, <https://www.facebook.com/christiaan.yingling/videos/691975064329854/> (2:24 mark).

²²³ *Id.* (6:27 mark).

²²⁴ *Id.* (8:01 mark).

²²⁵ Routh, *supra* note 47.

²²⁶ Pennsylvania Light Foot Militia Laurel Highlands Ghost Company, FACEBOOK, Aug. 8, 2017, https://www.facebook.com/permalink.php?story_fbid=1934861403422517&id=1436871993221463.

²²⁷ Christian Yingling, FACEBOOK, Aug. 11, 2017, <https://www.facebook.com/christiaan.yingling/posts/698766176984076>.

²²⁸ Duggan, *supra* note 30.

171. Finally, Defendant Curbelo, commander of the New York Light Foot Militia, stated in the rally's aftermath that "many of his [militia's] members . . . worried about the danger."²²⁹

F. Alt-Right Leaders Intend to Stage Additional Rallies in Charlottesville

172. In recent months, Charlottesville has been almost metronomically besieged by alt-right fear tactics. On May 13, 2017, Richard Spencer and Jason Kessler organized two rallies in Charlottesville. In the first, which took place in the afternoon, Spencer proclaimed that "[y]ou cannot destroy us. . . . We are here. We are never going away."²³⁰ In the second rally, which occurred at night, Spencer led a group into Lee Park (later renamed Emancipation Park). In a haunting show of intimidation, the gatherers hoisted tiki torches and chanted, "You will not replace us!"²³¹

173. On July 8, 2017, about 50 members of the Ku Klux Klan and their supporters—some wearing Klan robes and carrying Confederate flags—gathered in Justice Park near a statue of Confederate General Stonewall Jackson. Altercations ensued between the Klansmen and the counter-protestors.

174. Alt-right warriors descended on Charlottesville on August 12, 2017. Immediately afterwards, they promised to regroup and return stronger than ever. In an interview on the evening of August 12, 2017, Defendant Mosley insisted that "[w]e're coming back to Charlottesville." Mosley himself was in the process of moving from Pennsylvania to Virginia. "In Virginia, he said, he could more easily organize the next big alt-right rallies in the state

²²⁹ Wallace, *supra* note 15.

²³⁰ Laura Vozzella, *White Nationalist Richard Spencer Leads Torch-Bearing Protesters Defending Lee Statue*, WASH. POST, May 14, 2017, https://www.washingtonpost.com/local/virginia-politics/alt-rights-richard-spencer-leads-torch-bearing-protesters-defending-lee-statue/2017/05/14/766aaa56-38ac-11e7-9e48-c4f199710b69_story.html.

²³¹ *Id.*

capital, Richmond, and of course, in Charlottesville.”²³² Mosley looks forward to “building our movement” through “real world activism,” and he plans to “be at the forefront of this great awakening among our people.”²³³

175. In an interview on the afternoon of August 12, 2017, after the police had declared an unlawful assembly and ordered Emancipation Park cleared, Defendant Heimbach claimed that “we’re continuing [W]e’re gonna keep fighting.”²³⁴ The following Wednesday, Heimbach declared that “[w]e will be back, Charlottesville, and we will be back with more men.”²³⁵

176. After the rally ended, David Duke—a former Grand Wizard of the KKK—announced on Twitter that “[w]e will be back to #Charlottesville . . . soon. That’s a promise.”²³⁶ Duke’s other tweets that weekend confirmed his earnestness: “This is only the beginning, believe me”,²³⁷ “Never forget - just the beginning”,²³⁸ “It’s far from over, believe me -”,²³⁹ and “#Charlottesville was our Thermopylae. You know what comes after that.”²⁴⁰ Speaking at McIntire Park on the afternoon of August 12, 2017, Duke asserted—to roaring applause—that “we will be back in Charlottesville as long as it takes until we secure our rights, our freedom, our

²³² Mathias & Campbell, *supra* note 5.

²³³ Eli Mosley, *Acceptance of Leadership*, IDENTITY EVROPA, Aug. 27, 2017, <https://www.identityevropa.com/action-report/renewal-of-leadership>.

²³⁴ *Race and Terror*, *supra* note 1.

²³⁵ Gabe Gutierrez and Erik Ortiz, *White Nationalists Warn They Will Return to Charlottesville*, NBC NEWS, Aug. 17, 2017, <https://www.nbcnews.com/news/us-news/white-nationalists-warn-they-will-return-charlottesville-n793421>.

²³⁶ David Duke, TWITTER, Aug. 12, 2017, 1:04 PM, <https://twitter.com/DrDavidDuke/status/896417049446166530>.

²³⁷ David Duke, TWITTER, Aug. 12, 2017, 12:22 AM, <https://twitter.com/DrDavidDuke/status/896225318746419200>.

²³⁸ David Duke, TWITTER, Aug. 12, 2017, 2:02 AM, <https://twitter.com/DrDavidDuke/status/896250630255382531>.

²³⁹ David Duke, TWITTER, Aug. 12, 2017, 7:40 PM, <https://twitter.com/DrDavidDuke/status/896516727273607168>.

²⁴⁰ David Duke, TWITTER, Aug. 13, 2017, 2:30 PM, <https://twitter.com/DrDavidDuke/status/896801236388900864>.

heritage, and our future!”²⁴¹ As he was leaving the rally on August 12, moreover, Duke remarked to a videographer that “[w]e will be back.”²⁴²

177. Richard Spencer, a prominent alt-right leader, also repeatedly vowed to return to Charlottesville to participate in future rallies. After the police declared an unlawful assembly, he insisted that “we’ll be back!”²⁴³ That evening, Spencer told a *Rolling Stone* reporter that “we’re going to have to come back to Charlottesville.”²⁴⁴ He laid bare his intentions in a video uploaded later that evening: “We are gonna make Charlottesville the center of the universe. We are gonna come back here often. Your head’s gonna spin, how many times we’re gonna be back. We are absolutely never backing down! . . . We’re gonna make even more of a fool of you when we’re back here!”²⁴⁵ After the rally, Spencer told one publication that “[w]e’re going to be back here We’ll be back here 1,000 times if necessary. . . . Because I have the will to win, I keep going until I win.”²⁴⁶ And at a news conference the following Monday, August 14, 2017, Spencer promised to hold another rally in Charlottesville. “There is no way in hell that I am not going back,” he said.²⁴⁷

²⁴¹ *Dr. David Duke and Mike Enoch Speech at McIntire Park After Unite the Right Rally 8/12/2017*, YOUTUBE, Aug. 14, 2017, <https://www.youtube.com/watch?v=p4ZzehhjOYQ> (5:17 mark).

²⁴² *Race and Terror*, *supra* note 1 (10:06 mark).

²⁴³ *Richard Spencer McIntire Speech*, YOUTUBE, Sept. 19, 2017, <https://www.youtube.com/watch?v=-d6mUjDLQog> (:36 mark).

²⁴⁴ Sarah Posner, *After Charlottesville Rally Ends in Violence, Alt-Right Vows to Return*, ROLLING STONE, Aug. 13, 2017, <http://www.rollingstone.com/politics/news/charlottesville-white-supremacist-rally-erupts-in-violence-w497446>.

²⁴⁵ Richard B. Spencer, *A Message for Charlottesville*, PERISCOPE, Aug. 12, 2017, <https://www.pscp.tv/RichardBSpencer/1yNxamRYwwlxj?t=2>.

²⁴⁶ Alana Goodman, *White Nationalist Leader Richard Spencer Vows to Keep Demonstrating in Charlottesville*, DAILY MAIL, Aug. 13, 2017, <http://www.dailymail.co.uk/news/article-4785976/Richard-Spencer-vows-Charlottesville-demonstrations.html>.

²⁴⁷ Alan Feuer, *Far Right Plans Its Next Moves with a New Energy*, N.Y. TIMES, Aug. 14, 2017, <https://www.nytimes.com/2017/08/14/us/white-supremacists-right-wing-extremists-richard-spencer.html>.

178. On the evening of August 12, 2017, Christopher Cantwell was asked, “What do you think this means for the next alt-right protest?” He responded, “I say it’s gonna be really tough to top, but we’re up to the challenge.”²⁴⁸

179. At 8:29 PM on August 12, 2017, the *Daily Stormer* informed its readers that “we are not going to back down. There will be more events. Soon.”²⁴⁹

180. Sure enough, Defendant Mosley returned to Charlottesville after dusk on October 7, 2017, alongside alt-right chieftains Richard Spencer and Mike “Enoch” Peinovich. They led between 40 and 50 white nationalists in yet another torchlit procession to Emancipation Park—a move they had been “planning . . . for a long time.”²⁵⁰ The three figures took turns using a megaphone, revealing the depth of their fixation with Charlottesville.

181. Peinovich addressed the city first: “Hello, Charlottesville! We’re back! And we have a message: We’re back, and we’re gonna keep coming back!”²⁵¹ Spencer warned that Charlottesville “has become symbolic,”²⁵² and that alt-right demonstrators would “come back again and again and again!”²⁵³ He promised that “there’s gonna be a lot more crime, sweetheart!”²⁵⁴ Charlottesville would just “have to get used to it!”²⁵⁵ Defendant Mosley concluded the event by leading the crowd in chanting, “We will be back!”²⁵⁶

²⁴⁸ *Race and Terror*, *supra* note 1 (20:55 mark).

²⁴⁹ #UniteTheRight: Charlottesville LIVE UPDATES, DAILY STORMER, Aug. 12, 2017, 8:29 PM, <https://web.archive.org/web/20170814195122/https://www.dailystormer.com/unitetheright-charlottesville-live-updates/>.

²⁵⁰ Susan Svrluga, “We Will Keep Coming Back”: Richard Spencer Leads Another Torchlit March in Charlottesville, WASH. POST, Oct. 7, 2017, <https://www.washingtonpost.com/news/grade-point/wp/2017/10/07/richard-spencer-leads-another-torchlight-march-in-charlottesville/>.

²⁵¹ Spencer, *supra* note 2 (7:35 mark).

²⁵² *Id.* (7:54 mark).

²⁵³ *Id.* (9:53 mark).

²⁵⁴ *Id.* (9:36 mark).

²⁵⁵ *Id.* (9:21 mark).

²⁵⁶ *Id.* (15:44 mark).

182. Although paramilitary activity did not occur at the May 13, July 8, and October 7 demonstrations, Defendant Mosley has described the Unite the Right rally as a quantum leap in the alt-right movement's willingness and preparedness to use organized force. He warned his online readership that "Cville was dropping the bomb on Hiroshima. There will be more chaos ahead and everyone involved should be ready."²⁵⁷

G. Future Rallies Will Again Attract Alt-Right Paramilitary Organizations Prepared to Inflict Serious Harm

183. On its own, the mere act of staging a public gathering enjoys constitutional protection. But just as Unite the Right participants anticipated and carried out repeated, coordinated violent encounters, future rallies orchestrated by white-nationalist leaders will almost certainly attract alt-right warriors—including paramilitary organizations—prepared to inflict serious and irreparable harm.

184. An unnamed Unite the Right attendee reflected that the rally "helped us gain valuable experience in organizing protests." He then previewed what lay ahead: "I foresee us training in formation in creating perimeters and creating corridors for /ourguys/. These lessons will help us make sure the next Charlottesville is more successful, (there will be a next one, mark my words)."²⁵⁸

185. Anticipating future alt-right mega-rallies, Defendant Kessler stated in a podcast on September 15, 2017, that "there's a lot of these groups out there that just need to be working

²⁵⁷ Eli Mosley, TWITTER, Sept. 12, 2017, 1:22 PM, <https://twitter.com/ThatEliMosley/status/907655627530530816>.

²⁵⁸ "Thoughts on Charlottesville from Someone Who Went There," *Identitarian*, VOAT, Aug. 21, 2017, <https://voat.co/v/Identitarian/2077131>.

together.”²⁵⁹ Organizers like himself would help “get that broad base of support” for the white-nationalist movement to keep working in concert.²⁶⁰

186. On the morning of August 12, 2017, the *Daily Stormer* proudly exclaimed that “WE HAVE AN ARMY!”—“THIS IS THE BEGINNING OF A WAR!”²⁶¹ It followed up with an equally menacing message later that evening: “[T]o everyone, know this: we are now at war.”²⁶²

187. Robert “Azzmador” Ray, a features writer for the *Daily Stormer*, explained that his ideological goals are predicated on the use of force: “At some point, we will have enough power that we will clear them from the streets forever. That which is degenerate, in white countries, will be removed.”²⁶³ He also declared that “[w]e’re starting to slowly unveil a little bit of our power level. You ain’t seen nothing yet.”²⁶⁴

188. Asked on August 12, 2017, whether he and fellow white-nationalist protestors were capable of violence, Christopher Cantwell replied, “Of course we’re capable. I’m carrying a pistol! I go to the gym all the time. I’m trying to make myself more capable of violence!”²⁶⁵ Cantwell told the same interviewer that “we’re not non-violent—we’ll fucking kill these people if we have to.”²⁶⁶ He later added that “I think a lot more people are gonna die before we’re done here, frankly People die violent deaths all the time. Like, this is part of the reason why we

²⁵⁹ *Cantwell and Kessler: Monument Flashpoint, Trump Meets w/Democrats & Richmond’s Ghetto Shooting Spree*, REAL NEWS WITH JASON KESSLER, Sept. 16, 2017, <https://soundcloud.com/realnewswithjasonkessler/cantwell-kessler-monument-flashpoint-trump-meets-w-democrats-richmonds-ghetto-shooting-spree> (3:24 mark).

²⁶⁰ *Id.* (3:33 mark).

²⁶¹ *LIVE UPDATES*, *supra* note 249, Aug. 12, 2017, 11:22 AM.

²⁶² *Id.*, Aug. 12, 2017, 8:29 PM.

²⁶³ *Race and Terror*, *supra* note 1 (8:21 mark).

²⁶⁴ *Id.* (8:37 mark).

²⁶⁵ *Id.* (3:37 mark).

²⁶⁶ *Id.* (7:08 mark).

want an ethno-state, right?”²⁶⁷ Cantwell also marveled that the actual levels of violence in Charlottesville were not significantly higher: “The amount of restraint that our people showed out there, I think was astounding.”²⁶⁸

189. After Cantwell was pepper-sprayed at the Unite the Right rally, a nearby associate assured him that “We’re gonna fuckin’ kill ‘em. I fuckin’ promise you—we’re gonna fuckin’ kill these pieces of shit.”²⁶⁹

190. Defendant Matthew Heimbach has expressed “willing[ness] to die for his cause”²⁷⁰ at future public gatherings. Richard Spencer has done the same: “I crossed a Rubicon long ago that I’m willing to die,”²⁷¹ for “politics can be a war.”²⁷²

191. Matthew Parrott, the Director of Defendant TWP, has extolled the alt-right’s recent evolution into “a proven street fighting faction.”²⁷³

192. A member of Defendant Vanguard America named “Dylan”—likely its leader, Dillon Irizarry—told ABC News’s *20/20* that “[w]e want to be like ants. We’re a colony and we just go and destroy everything in our way.”²⁷⁴

193. Ken Parker, a regional director of Defendant NSM, told a reporter that “[w]e would have killed every one of those motherfuckers if the cops weren’t there.”²⁷⁵

²⁶⁷ *Id.* (21:02 mark).

²⁶⁸ *Id.* (20:46 mark).

²⁶⁹ Jack Smith IV, TWITTER, Aug. 12, 2017, 11:50 AM, <https://twitter.com/JackSmithIV/status/896579771760615428>.

²⁷⁰ Thompson et al., *supra* note 207.

²⁷¹ Heimbach, Spencer, *supra* note 7 (6:48 mark).

²⁷² *Id.* (7:06 mark).

²⁷³ Parrott, *supra* note 8.

²⁷⁴ Keturah Gray et al., *How White Nationalists, Counterprotestors Who Were in Charlottesville Prepare for Rallies*, ABC NEWS, Aug. 17, 2017, <http://abcnews.go.com/US/white-nationalists-counter-protesters-charlottesville-prepare-rallies/story?id=49263007>.

²⁷⁵ Thayer, *supra* note 140.

194. In reacting to Heather Heyer's tragic death, many Unite the Right participants condoned the prospect of using violence to achieve their ideological aims. Ken Parker, for example, confessed to a journalist that "I am glad that woman is dead. She was a communist feminist. . . . They got exactly what was coming to them."²⁷⁶ Mike "Enoch" Peinovich also expressed grave indifference to Heyer's fate: "I don't give a shit about this dead cat lady. Whatever. The world is a better place."²⁷⁷ And users of the Discord app ridiculed Fields's deceased victim while valorizing his lethal hit-and-run tactics.

195. Justin Moore, the Grand Dragon for the Loyal White Knights of the Ku Klux Klan (and a Unite the Right attendee), told a local reporter that "I'm sorta glad that them people got hit and I'm glad that girl died. . . . They were a bunch of Communists out there protesting against somebody's freedom of speech, so it doesn't bother me that they got hurt at all." He then issued a dire prediction: "I think we're going to see more stuff like this happening at white nationalist events I think there will be more violence like this in the future to come."²⁷⁸ His colleague Chris Baker, the group's Imperial Wizard, concurred: "When a couple of them die, it doesn't bother us."²⁷⁹ The organization's voicemail recording echoed these sentiments: "Nothing makes us more proud at the KKK than [when] we see white patriots such as James Fields, Jr., age 20, taking his car and running over nine communist anti-fascists, killing one nigger-lover named Heather Heyer."²⁸⁰

²⁷⁶ *Id.*

²⁷⁷ Simone Wilson, *Mike "Enoch" Peinovich, Upper East Side Neo-Nazi, Helped Lead Charlottesville Rally*, PATCH, Aug. 17, 2017, <https://patch.com/new-york/upper-east-side-nyc/mike-peinovich-upper-east-side-neo-nazi-helped-lead-charlottesville>.

²⁷⁸ Steve Crump, *NC KKK Leader: "I'm Glad That Girl Died" During Virginia Protest*, WBTV, Aug. 15, 2017, <http://www.wbvtv.com/story/36139058/nc-kkk-leader-im-glad-that-girl-died-during-virginia-protest>.

²⁷⁹ *Id.*

²⁸⁰ *Id.*

196. In broadly ascribing murderous intent to attendees who did not share his views, Defendant Heimbach insinuated that a far larger death toll would have been legally justified on self-defense grounds: “[T]he left wanted to attack all of us. They want to kill anyone they disagree with. . . . These radical leftists truly are trying to kill anyone they disagree with.”²⁸¹ He even asserted—without evidence—that Heyer herself had sought to massacre white nationalists: “I’m also not going to cry over someone that was trying to kill me and my comrades just a few hours earlier.”²⁸² It was in that context that Heimbach promised “not [to] back down when they threaten us. We will defend ourselves.”²⁸³

197. Several key alt-right figures implausibly shifted culpability from Heyer’s killer, James Fields, to his defenseless victim. In doing so, they signaled the acceptability of using organized violence to harm counter-protestors appearing on public thoroughfares at future rallies. Defendant Kessler, for example, tweeted that “I 100% believe Heather Heyer was to blame for participating in an armed mob blocking traffic during a state of emergency.”²⁸⁴ That was after insisting that “Heather Heyer was a fat, disgusting Communist. Communists have killed 94 million. Looks like it was payback time.”²⁸⁵

198. Mike “Enoch” Peinovich similarly opined that “the murderer is not the driver of the car. . . . He did nothing wrong. Frankly, he should get a medal.”²⁸⁶ White-nationalist

²⁸¹ *Heimbach Defends Violence*, *supra* note 205 (2:58, 5:56 marks).

²⁸² *Id.* (5:54 mark).

²⁸³ *Id.* (4:27 mark).

²⁸⁴ Jason Kessler, TWITTER, Aug. 24, 2017, 3:40 PM, <https://twitter.com/TheMadDimension/status/900805089174138881>.

²⁸⁵ Matt Pearce, *Tweet from the Account of Charlottesville Rally Organizer Insults Slain Protester Heather Heyer*, L.A. TIMES, Aug. 19, 2017, <http://www.latimes.com/nation/la-na-charlottesville-organizer-20170818-story.html>.

²⁸⁶ Wilson, *supra* note 277.

attendee Kyle Hanophy concluded that Heyer “shouldn’t be standing out in traffic, I suppose.”²⁸⁷ And Christopher Cantwell insisted that “none of our people killed anybody unjustly,”²⁸⁸ and that Heyer’s death “was more than justified.”²⁸⁹ Those crushed by Fields’s vehicle were simply “a bunch of stupid animals who don’t pay attention.”²⁹⁰ Heyer, he maintained, was “a fucking rioter [who] was blocking fucking traffic.”²⁹¹

199. On September 12, 2017, The Virginia Flaggers—a group that glorifies Confederate emblems and memorials—uploaded a video to its Facebook page depicting liberal activists at the University of Virginia. One commenter suggested that “it might be time for someone to make a return trip to Charlottesville.” Within hours, other users posted the following responses:

- “I just want to know, when can we start shooting?”
- “Kill them and the knee grows!”
- “Unleash Hell on their asses”
- “Kill them all.”
- “Shoot em.”²⁹²

²⁸⁷ *Exclusive Interview with an American Nationalist Who Participated in Charlottesville*, YOUTUBE, Aug. 18, 2017, <https://www.youtube.com/watch?v=ezeXse5t4iQ>.

²⁸⁸ *Race and Terror*, *supra* note 1 (19:53 mark).

²⁸⁹ *Id.* (20:43 mark).

²⁹⁰ *Id.* (20:33 mark).

²⁹¹ *Cantwell and Kessler: Malcolm X vs MLK & Who Is a Backstabbing Buddyfucker in the Alt-Right Movement*, REAL NEWS WITH JASON KESSLER, Sept. 4, 2017, <https://soundcloud.com/realnewswithjasonkessler/cantwell-kessler-malcolm-x-vs-mlk-who-is-backstabbing-who-in-the-alt-right> (32:01 mark).

²⁹² *Virginia Flagger Supporters Suggest Killing Peaceful Protesters, Spout White Power Slogans on Flagger Facebook Page*, RESTORING THE HONOR, Sept. 13, 2017, <http://restoringthehonor.blogspot.com/2017/09/virginia-flaggers-supporters-suggest.html>.

H. The Militia Defendants Will Attempt to “Keep the Peace” at Future Alt-Right Rallies in Charlottesville by Engaging in Paramilitary Activity

200. Aware that the Unite the Right rally would involve more than the peaceful expression of ideas, Defendant Kessler solicited the presence of private militia groups. He reached out to Defendants Yingling and the Pennsylvania Light Foot Militia to provide protection. The “Charlottesville 2.0” Discord chats reveal that decision unfolding in real time, with Kessler first floating the idea on July 15, 2017. He reflected that “I think we need a contingent of people circling and guarding the statue I bet we could reach out to some of these militia groups to help.” Another user responded that “[V]anguard has members in the militia we could do some networking.” Kessler made the same appeal to C.J. Ross and the Virginia Three Percenters. Ross agreed that his group would “provide a security presence” on August 12.²⁹³

201. Private militias will likely appear at contentious public gatherings in Virginia even if alt-right leaders cease to actively recruit them. In an August 13, 2017, Facebook video, Defendant Yingling made clear his intentions: “In [my] first video, I stated, ‘It is time to put up or shut up.’ . . . I’m gonna reiterate that right now. If you call yourself militia, then you have to support the Constitution.”²⁹⁴ On August 21, Yingling created a GoFundMe account on behalf of the Pennsylvania Light Foot Militia Laurel Highlands Ghost Company. He appealed to those who “support what we do, and would like to see us keep doing it,” asking for “money to travel to different states to defend people’s constitutional rights.”²⁹⁵ And in a Facebook comment soon

²⁹³ McKenzie, *supra* note 217.

²⁹⁴ Yingling, *supra* note 33 (35:24 mark).

²⁹⁵ Christian Yingling, *Help Support the Constitution*, GOFUNDME, Aug. 21, 2017, <https://www.gofundme.com/help-support-the-constitution>.

after the rally ended, Yingling promised that “I will continue to fight until my last breath is drawn.”²⁹⁶

202. Defendant Curbelo, too, publicly reaffirmed his militia’s commitment in a Facebook video on August 13, 2017. He deemed it “important that whenever—*whenever*—there is any attempt at shutting down free speech, . . . patriotic Americans stand in opposition to that attempt.”²⁹⁷ Charlottesville was “a wakeup call for the patriot movement. . . . [A]re you truly willing to stand for the enforcement of everybody’s rights here in the United States?”²⁹⁸ Private militias must “keep [their] presence up”²⁹⁹ rather than “sit back and do nothing.”³⁰⁰ As for Curbelo himself, he was “looking forward to the next one.”³⁰¹ Curbelo also stated in a Facebook comment on August 22, 2017, that “I would do it again.”³⁰²

203. After returning home from Charlottesville, Defendant Curbelo claimed that his New York Light Foot Militia would send men to a right-wing rally scheduled for Washington, D.C. in September 2017.³⁰³ He had also pledged his group’s attendance in a July 14, 2017, Facebook video.³⁰⁴ One of Curbelo’s subordinates queried, “If we don’t, who’s going to do it?”³⁰⁵

204. Defendants Yingling and Curbelo indeed travelled to D.C. with their Light Foot regiments on September 16, 2017, for the so-called Mother of All Rallies. In a Facebook video

²⁹⁶ Yingling, *supra* note 33.

²⁹⁷ Curbelo, *supra* note 14 (41:56 mark).

²⁹⁸ *Id.* (43:10 mark).

²⁹⁹ *Id.* (35:35 mark).

³⁰⁰ *Id.* (35:51 mark).

³⁰¹ *Id.* (42:36 mark).

³⁰² George Curbelo, FACEBOOK, Aug. 22, 2017, <https://www.facebook.com/george.curbelo/posts/1593681324015592>.

³⁰³ Wallace, *supra* note 15.

³⁰⁴ Liberty Den Home of the American Patriot (George Curbelo), FACEBOOK, July 14, 2017, <https://www.facebook.com/TheLibertyDen/videos/1598745356810320/> (6:32 mark).

³⁰⁵ Wallace, *supra* note 15.

recorded that morning from the Washington Mall, Curbelo predicted that “[i]t’s probably gonna be a few hundred of us here today, just as part of a security element.”³⁰⁶ Curbelo was excited to be collaborating again with Yingling, who is “kind of a hero to us.”³⁰⁷

205. After describing the frequency of his paramilitary missions, Defendant Marion stated that he and American Freedom Keepers are “always trying to . . . organize and plan for the next event that’s coming up.”³⁰⁸

206. Defendant Baker made the same commitment on behalf of his group, American Warrior Revolution: “Mark my words. This is my first time ever to come to Charlottesville, but I can assure you of one thing—this will not be our last!”³⁰⁹ Perceived inaccuracies in media coverage were “damn sure not gonna keep us from coming back to Charlottesville, Virginia, again!”³¹⁰

207. Many militia groups in the Mid-Atlantic and Northeast maintain “mutual defense agreements,” ensuring maximum coverage at events expected to pose a risk of injury.³¹¹ Defendant Marion has explained that “being networked and coordinated across the country” allows militia groups to “bolster our numbers at these events.”³¹² Defendant Curbelo celebrated—and tapped into—such support structures in a Facebook video on July 14, 2017,

³⁰⁶ Liberty Den Home of the American Patriot (George Curbelo), FACEBOOK, Sept. 16, 2017, <https://www.facebook.com/TheLibertyDen/videos/1669632733054915/> (1:17 mark).

³⁰⁷ *Id.* (:35 mark).

³⁰⁸ Marion, *supra* note 35 (:9:43 mark).

³⁰⁹ Patriot Media, *Truth About Charlottesville*, FACEBOOK, Aug. 12, 2017, <https://www.facebook.com/joshgemmipatriotmedia/videos/335928490197751/> (1:53 mark).

³¹⁰ *Id.* (6:46 mark).

³¹¹ Duggan, *supra* note 30.

³¹² Marion, *supra* note 35 (1:03:40 mark).

appealing directly to his viewers: “We’re asking you for your participation, whether it’s through time or financial support, to any one of these organizations.”³¹³

208. Defendant Redneck Revolt, too, “look[s] forward to building stronger defense networks together” with groups like Defendant Socialist Rifle Association.³¹⁴

209. In sharp contrast to the Militia Defendants’ enthusiasm for attending future alt-right rallies, the Three Percenters National Council issued a stand-down order for its members following the Unite the Right rally. The organization “strongly reject[ed] and denounce[d] anyone who calls themselves a patriot or a Three Percenter that has attended or is planning on attending any type of protest or counter protest related to these white supremacist and Nazi groups.”³¹⁵

VI. CAUSES OF ACTION

Count 1

(Article I, Section 13 of the Virginia Constitution – Strict Subordination)

210. Plaintiffs reallege and incorporate by reference all allegations set forth in paragraphs 1 through 209 above.

211. Article I, Section 13 of the Virginia Constitution guarantees that “in all cases the military should be under strict subordination to, and governed by, the civil power.”

212. Because no further legislation is required to make it operative, the Strict Subordination Clause—like most of the Virginia Constitution’s Bill of Rights—is self-executing

³¹³ *What is the Measure of Your Resolve?*, Liberty Den Home of the American Patriot (George Curbelo), July 14, 2017, FACEBOOK, <https://www.facebook.com/TheLibertyDen/videos/1598745356810320/>.

³¹⁴ *Reportback: Charlottesville*, *supra* note 55.

³¹⁵ *The Three Percenters Official Statement Regarding the Violent Protests in Charlottesville*, THE THREE PERCENTERS, Aug. 12, 2017, <https://www.thethreeperceters.org/single-post/2017/08/12/The-Three-Percenters-Official-Statement-Regarding-the-Violent-Protests-in-Charlottesville>.

and gives rise to a private right of action. *See Gray v. Virginia Sec’y of Trans.*, 276 Va. 93, 103 (2008).

213. On August 12, 2017, Defendants Traditionalist Worker Party, Vanguard America, League of the South, National Socialist Movement, Pennsylvania Light Foot Militia, New York Light Foot Militia, Virginia Minutemen Militia, American Freedom Keepers, American Warrior Revolution, Redneck Revolt, and Socialist Rifle Association organized as “military” units within the meaning of Article I, Section 13 of the Virginia Constitution.

214. On August 12, 2017, Defendants Matthew Heimbach, Cesar Hess, Spencer Borum, Michael Tubbs, Jeff Schoep, Christian Yingling, George Curbelo, Francis Marion, and Ace Baker were members and/or commanders of their respective military units. Defendants Jason Kessler and Eli Mosley—as co-organizers of the Unite the Right rally—solicited the presence of paramilitary organizations, facilitated attendees’ instruction in military techniques, and issued tactical commands to the other Alt-Right Defendants on August 12.

215. Defendants did not follow the statutory prerequisites for acting as a military unit and are not responsible to, or under the command of, the civil power in Virginia.

216. Defendants intend to operate as a military unit, or as members and commanders thereof, in Virginia in the immediate future.

217. Defendants’ continued operation as military units, or as members and commanders thereof, independent of the civil power in Virginia will violate Article I, Section 13 of the Virginia Constitution.

218. Defendants’ planned conduct will cause irreparable harm to Plaintiffs, for which no adequate legal remedy exists.

Count 2

(Virginia Code § 18.2-433.2(1) – Unlawful Paramilitary Activity)

219. Plaintiffs reallege and incorporate by reference all allegations set forth in paragraphs 1 through 218 above.

220. At the Unite the Right rally on August 12, 2017, as well as before arriving, Defendants Matthew Heimbach, Cesar Hess, Spencer Borum, Michael Tubbs, Jeff Schoep, Jason Kessler, Eli Mosley, Christian Yingling, George Curbelo, Francis Marion, and Ace Baker taught and/or demonstrated to others the use of firearms and other techniques—including the use of shields, flagpoles, and batons as offensive weapons—capable of causing injury or death.

221. Defendants Heimbach, Hess, Borum, Tubbs, Schoep, Kessler, Mosley, Yingling, Curbelo, Marion, and Baker knew and intended that these techniques would be used in and/or in furtherance of a “civil disorder” within the meaning of § 18.2-433.2 of the Virginia Code.

222. The Unite the Right rally was a “civil disorder” within the meaning of § 18.2-433.2 of the Virginia Code because it was a public disturbance in the United States that involved acts of violence by assemblages of three or more persons, which caused both immediate danger of damage and injury, and actual damage and injury, to persons and property.

223. Defendants Heimbach, Hess, Borum, Tubbs, Schoep, Kessler, Mosley, Yingling, Curbelo, Marion, and Baker intend to teach and/or demonstrate the use of firearms and other techniques capable of causing injury and death again in Virginia in the immediate future. The above Defendants know, have reason to know, and/or intend that such techniques will be used in and/or in furtherance of a “civil disorder” within the meaning of § 18.2-433.2 of the Virginia Code.

224. Defendants' planned conduct in this manner will violate § 18.2-433.2(1) of the Virginia Code.

225. Defendants' continued unlawful paramilitary activity will cause irreparable harm to Plaintiffs, for which no adequate legal remedy exists.

226. Because Plaintiffs will suffer irreparable and incalculable harm from Defendants' planned conduct, the Court has authority to enjoin Defendants from violating § 18.2-433.2(1) in the future. *See Black & White Cars, Inc. v. Groome Transp., Inc.*, 247 Va. 426, 430 (1994).

Count 3

(Virginia Code § 18.2-433.2(2) – Unlawful Paramilitary Activity)

227. Plaintiffs reallege and incorporate by reference all allegations set forth in paragraphs 1 through 226 above.

228. At the Unite the Right rally on August 12, 2017, as well as before arriving, Defendants Traditionalist Worker Party, Vanguard America, League of the South, National Socialist Movement, Pennsylvania Light Foot Militia, New York Light Foot Militia, Virginia Minutemen Militia, American Freedom Keepers, American Warrior Revolution, Redneck Revolt, and Socialist Rifle Association assembled with multiple persons for the purpose of training with, practicing with, and/or being instructed in the use of firearms and other techniques—including the use of shields, flagpoles, and batons as offensive weapons—capable of causing injury or death.

229. Defendants Traditionalist Worker Party, Vanguard America, League of the South, National Socialist Movement, Pennsylvania Light Foot Militia, New York Light Foot Militia, Virginia Minutemen Militia, American Freedom Keepers, American Warrior Revolution, Redneck Revolt, and Socialist Rifle Association intended that these techniques would be used in

and/or in furtherance of a “civil disorder” within the meaning of § 18.2-433.2 of the Virginia Code.

230. The Unite the Right rally was, in fact, a “civil disorder” within the meaning of § 18.2-433.2 of the Virginia Code because it was a public disturbance in the United States that involved acts of violence by assemblages of three or more persons, which caused both immediate danger of damage and injury, and actual damage and injury, to persons and property.

231. The Defendant groups indicated above intend to assemble for the purpose of training with, practicing with, and/or being instructed in the use of firearms and other techniques capable of causing injury or death again in Virginia in the immediate future. Defendants know and intend that such techniques will be used in and/or in furtherance of a “civil disorder” within the meaning of § 18.2-433.2 of the Virginia Code.

232. Defendants’ planned conduct in this manner will violate § 18.2-433.2(2) of the Virginia Code.

233. Defendants’ continued unlawful paramilitary activity will cause irreparable harm to Plaintiffs, for which no adequate legal remedy exists.

234. Because Plaintiffs will suffer irreparable and incalculable harm from Defendants’ planned conduct, the Court has authority to enjoin Defendants from violating § 18.2-433.2(2) in the future. *See Black & White Cars, Inc.*, 247 Va. at 430.

Count 4

(Virginia Code § 18.2-174 – Falsely Assuming the Functions of Peace Officers and/or Other Law-Enforcement Officers)

235. Plaintiffs reallege and incorporate by reference all allegations set forth in paragraphs 1 through 234 above.

236. Defendants Pennsylvania Light Foot Militia, New York Light Foot Militia, Virginia Minutemen Militia, American Freedom Keepers, American Warrior Revolution, Redneck Revolt, and Socialist Rifle Association purported to “keep the peace” at the Unite the Right rally on August 12, 2017, by engaging in paramilitary activity. In so doing, they falsely assumed the functions of state and local peace officers and other law-enforcement officers.

237. These Defendants intend to “keep the peace” at future alt-right rallies occurring in Virginia.

238. Defendants’ continued false assumption of law-enforcement functions will violate § 18.2-174 of the Virginia Code.

239. Defendants’ planned conduct will cause irreparable harm to Plaintiffs, for which no adequate legal remedy exists.

240. Because Plaintiffs will suffer irreparable and incalculable harm from Defendants’ planned conduct, the Court has authority to enjoin Defendants from violating § 18.2-174 in the future. *See Black & White Cars, Inc.*, 247 Va. at 430.

Count 5

(Public Nuisance)

241. Plaintiffs reallege and incorporate by reference all allegations set forth in paragraphs 1 through 240 above.

242. At the Unite the Right rally on August 12, 2017, Defendants Jason Kessler, Eli Mosley, Traditionalist Worker Party, Matthew Heimbach, Cesar Hess, Vanguard America, League of the South, Spencer Borum, Michael Tubbs, National Socialist Movement, Jeff Schoep, Pennsylvania Light Foot Militia, Christian Yingling, New York Light Foot Militia, George Curbelo, Virginia Minutemen Militia, American Freedom Keepers, Francis Marion,

American Warrior Revolution, Ace Baker, Redneck Revolt, and Socialist Rifle Association engaged in paramilitary activity independent of any civil authority in public streets, public parks, and other public areas, substantially interfering with public health, safety, peace, and comfort, and the general welfare.

243. Defendants' conduct in this manner constituted a public nuisance.

244. Defendants plan to return to return to Virginia for the purpose of engaging in paramilitary activity in public areas independent of any civil authority.

245. When Defendants engage in paramilitary activity in public areas independent of any civil authority, their conduct necessarily threatens public health, safety, peace, and comfort, and the general welfare.

246. Defendants' planned conduct will continue the public nuisance and cause irreparable harm to Plaintiffs, for which no adequate legal remedy exists.

247. Because Plaintiffs will suffer irreparable harm from Defendants' planned conduct, the Court has authority to enjoin Defendants from engaging in activity that constitutes a public nuisance. *See Ritholz v. Commonwealth*, 184 Va. 339, 350 (1945).

VII. **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that the Court enter an order:

- 1) Declaring that Defendants' conduct in organizing and acting as military units independent of the civil authority in Virginia violates Article I, Section 13 of the Virginia Constitution;
- 2) Declaring that Defendants' conduct in teaching and/or demonstrating the use of firearms and/or other techniques capable of causing injury or death at future public gatherings in Virginia violates § 18.2-433.2(1) of the Virginia Code;

- 3) Declaring that Defendants' conduct in assembling to train with, practice with, and/or be instructed in the use of firearms and/or other techniques capable of causing injury or death at future public gatherings in Virginia violates § 18.2-433.2(2) of the Virginia Code;
- 4) Declaring that Defendants' conduct in falsely assuming the functions of peace officers and/or other law-enforcement officers violates § 18.2-174 of the Virginia Code;
- 5) Declaring that Defendants' conduct in engaging in paramilitary activity constitutes a public nuisance;
- 6) Enjoining Defendants and their directors, officers, agents, and employees from violating Article I, Section 13 of the Virginia Constitution; violating § 18.2-433.2 and § 18.2-174 of the Virginia Code; and engaging in conduct that constitutes a public nuisance; and
- 7) Providing such other and further relief as this Court may deem just and proper.

October 12, 2017

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**Pro hac vice* motion pending.